रजिस्ट्री सं. डी. एल.-33001/ 99 REGISTERED NO. D. L.—33001/99

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं॰ 33] नई दिल्ली, शनिवार, अगस्त 14, 1999/श्रावण 23, 1921
No. 33] NEW DELHI, SATURDAY, AUGUST 14, 1999/SRAVANA 23, 1921

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 30 जुलाई, 1999

(आय-कर)

का.आ. 2271.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खण्ड (23—ग) के उपखण्ड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा "वोहनवुर फैलोशिप, जिला तिरूनेल्वेली तमिलनाडु" को कर निर्धारण वर्ष 1995-1996 से 1997-1998 तक के लिए निम्नलिखित शर्तों के अध्यधीन रहते हुए उक्त उप-खण्ड के प्रयोजनार्थ अधिसूचित करती है, अर्थात :—

(i) कर-निर्धारिती उसकी आय का इस्तेमाल अथवा उसकी आय का इस्तेमाल करने के लिए उसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा, जिनके लिए इसकी स्थापना की गई है;

(ii) कर निर्धारिती ऊपर उल्लिखित कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर, जवाहिरात, फर्नीचर अथवा किसी अन्य वस्तु, के रूप में प्राप्त तथा रख-रखाव में स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा,

(iii) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी, जोकि कारोबार से प्राप्त लाभ तथा अभिलाभ हो, जब तक कि ऐसा कारोबार उक्त कर-निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा-पुस्तिकाएं नहीं रखी जाती हों।

[अधिसूचना सं. 11016/फा.सं. 197/68/99-आ.क.नि. I]

समर भद्र, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 30th July, 1999

(INCOME TAX)

S.O. 2271.—In exercise of the powers conferred by the sub-clause (v) of clause (23C) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the "Dohnavur Fellowsihp, Tirunelveli District, Tamil Nadu" for the purpose of the said sub-clause for the assessment years 1995-96 to 1997-98 subject to the following conditions, namely :—

(i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established ;

(ii) the assessee will not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;

(iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business.

[Notification No. 11016/F. No. 197/68/99-ITA.I]

SAMAR BANDRA, Under Secy.

नई दिल्ली, 30 जुलाई, 1999

का.आ. 2272.—आयकर नियमावली, 1962 के नियम 2ग क के साथ पठित आयकर अधिनियम, 1961 की धारा 10 के खण्ड (23-ग) के उपखण्ड (vi) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय प्रत्यक्ष कर बोर्ड "बिरला इन्स्टीट्यूट आफ टैक्नोलाजी, कलकत्ता" को कर निर्धारण वर्ष 1999-2000 से 2001-2002 तक के लिए उक्त खण्ड के प्रयोजनार्थ अनुमोदित करता है।

बशर्ते कि यह संस्था आयकर नियमावली, 1962 के नियम 2 गक के साथ पठित आयकर अधिनियम, 1961 की धारा 10 के खण्ड (23-ग) के उपखण्ड (vi) के उपबंधों के अनुरूप होगी और उनका अनुपालन करेगी।

[अधिसूचना सं. 11019/फा.सं. 197/80/99-आयकर नि.-I]

समर भद्र, अवर सचिव

New Delhi, the 30th July, 1999

S.O. 2272.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of section 10 of the Income-tax Act, 1961 (43 of 1961), read with rule 2CA of the Income-tax Rules, 1962, the Central Board of Direct Taxes hereby approves the "Birla Institute of Technology, Calcutta" for the purpose of the saind Section for the assessment years 1999-2000 to 2001-2002.

Provided that the Society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of section 10 of the Income-tax Act, 1961, read with rule 2CA of the Income-tax Rules, 1962.

[Notification No. 11019/F. No. 197/80/99-ITA-I]

SAMAR BHADRA, Under Secy.

नई दिल्ली, 30 जुलाई, 1999

(आय कर)

का.आ. 2273.—आयकर नियमावली, 1962 के नियम 2 ग क के साथ पठित आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खण्ड (23 ग) के उपखण्ड (vi) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय प्रत्यक्ष कर बोर्ड एतद्द्वारा "बिड़ला एजूकेशन ट्रस्ट, कलकत्ता" को उक्त धारा के प्रयोजनार्थ कर निर्धारण वर्ष 1999-2000 से 2001-2002 तक के लिए अनुमोदित करता है।

बशर्ते कि ट्रस्ट आयकर नियमावली, 1962 के नियम 2 ग क के साथ पठित आयकर अधिनियम, 1961 की धारा 10 के खण्ड (23 ग) के उपखण्ड (vi) के के उपबंधों के अनुरूप हो और उनका अनुपालन करता हो।

बशर्ते यह भी कि ट्रस्ट यह सुनिश्चित करेगा कि 31-3-2000 से पहले सभी निवेश आयकर अधिनियम, 1961 की धारा 11 की उपधारा (5) में विनिर्दिष्ट मानदण्डों के अनुसार हों।

[अधिसूचना संख्या : 11020/फा.सं. 197/79ए/99-आ.का.नि. I]

समर भद्र, अवर सचिव

New Delhi, the 30th July, 1999

(INCOME-TAX)

S.O. 2273.—In exercise of the powers conferred by the sub-clause (vi) of clause (23C) section 10 of the Income tax Act, 1961 (43 of 1961), read with rule 2CA of the Income-tax Rules, 1962, the Central Board of Direct Taxes hereby approves the "Birla Education Trust, Calcutta", for the purpose of the said section for the assessment years 1999-2000 to 2001-2002.

Provided that the Trust conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of section 10 of the Income-tax Act, 1961, read with rule 2CA of the Income-tax Rules, 1962.

Provided further that the Trust will ensure that before 31-3-2000 all the investments are as per the modes specified in sub-section (5) of Section 11 of the Income tax Act, 1961.

[Notification No 11020/F. No. 197/79A/99-ITA.I]

SAMAR BHADRA, Under Secy

(व्यय विभाग)

नई दिल्ली, 5 अगस्त , 1999

का.आ. 2274.—राष्ट्रपति, एतद्द्वारा भारत के संविधान के अनुच्छेद 77 की धारा (3) के अनुसरण में वित्तीय शक्तियों के प्रत्यायोजन नियम, 1978 में तदन्तर संशोधन के लिए निम्नलिखित नियमों को बनाते हैं, नामत:

(1) इन नियमों को वित्तीय शक्तियों के प्रत्यायोजन (संशोधन) नियम, 1999 कहा जाएगा ।

(2) ये सरकारी राजपत्र में प्रकाशित होने की तारीख से लागू होंगे ।

2. वित्तीय शक्तियों के प्रत्यायोजन नियम, 1978 की अनुसूची V के परिशिष्ट में क्रम संख्या 12 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित को प्रतिस्थापित किया जाए, नामत:

मद की क्र.सं.	व्यय की मद	धन की परिसीमा जिस तक व्यय उपगत किया जा सकता है	नियम, आदेश निर्बंधन या मान जिनके अधीन रहते हुए व्यय किया जाएगा
(1)	(2)	(3)	(4)
"12.	लघु संकर्म और मरम्मतें :		
	(i) सरकारी भवनों में छोटे मोटे-मोटे कार्यों और विशेष प्रकार की मरम्मत करना, जिसमें सफाई संबंधी फिटिंग, जल आपूर्ति और ऐसे भवनों में बिजली लगाना तथा लगाई गई फिटिंग की मरम्मत शामिल है ।	हर एक दशा में 30,000 रुपए	इन शक्तियों का प्रयोग करते समय सामान्य वित्तीय नियमावली 1963 के नियम 137, 141 और 142 के उपबंधों का अनुपालन किया जाएगा ।
	(ii) सरकारी भवनों की साधारण मरम्मत (iii) भाड़े पर लिए गए और अर्जित भवनों की मरम्मत और उनमें परिवर्तन	पूरी शक्तियां अनावर्ती 30,000 रुपए प्रति वर्ष और आवर्ती 6,000 रुपए प्रति वर्ष	एसा व्यय केवल तभी उपगत किया जा सकेगा जब भूस्वामी ने स्वयं प्रभार देने से इन्कार कर दिया हो तथा जब भवन सम्मोचित किया जाएगा तो सरकार को यह अधिकार होगा कि वह उस भवन में लगाई गई किसी भी चीज या सामग्री को हटा ले। केन्द्रीय सरकार के विभागों को उप मद (i) और (iii) पर व्यय नीचे उपदर्शित धन परिसीमाओं तक उपगत करने की शक्ति होगी । (i) प्रत्येक मामले में 30,000 रुपए (iii) अनावर्ती 50,000 रुपए प्रतिवर्ष आवर्ती 6,000 रुपए प्रतिवर्ष

[सं. 1 (34)—संस्था-II (क)/97]
नारायण दास, अवर सचिव

टिप्पणी : —दिनांक 22 जुलाई, 1978 की अधिसूचना संख्या एस.ओ. 2131 के अन्तर्गत प्रकाशित वित्तीय शक्तियों के प्रत्यायोजन नियम, 1978 का बाद में निम्नवत संशोधन किया गया है :—

(1) अधिसूचना संख्या एस.ओ. 1187, दिनांक 9-6-1979
(2) अधिसूचना संख्या एस.ओ. 2942, दिनांक 1-9-1979
(3) अधिसूचना संख्या एस.ओ. 2611, दिनांक 4-10-1980

(4) अधिसूचना संख्या एस.ओ. 2164, दिनांक 15-8-1981
(5) अधिसूचना संख्या एस.ओ. 2304, दिनांक 5-9-1981
(6) अधिसूचना संख्या एस.ओ. 3073, दिनांक 4-9-1982
(7) अधिसूचना संख्या एस.ओ. 4171, दिनांक 11-12-1982
(8) अधिसूचना संख्या एस.ओ. 1314, दिनांक 26-2-1983
(9) अधिसूचना सख्या एस.ओ. 2502, दिनांक 4-8-1984
(10) अधिसूचना संख्या एस.ओ. 22, दिनांक 5-1-1985
(11) शुद्धि-पत्र संख्या एस.ओ. 1958, दिनांक 11-5-1985
(12) अधिसूचना संख्या एस.ओ. 3082, दिनांक 6-7-1985
(13) अधिसूचना संख्या एस.ओ. 3974, दिनांक 24-8-1985
(14) अधिसूचना संख्या एस.ओ. 5641, दिनांक 21-12-1985
(15) अधिसूचना संख्या एस.ओ. 1548, दिनांक 19-4-1986
(16) अधिसूचना संख्या एस.ओ. 3183, दिनांक 20-9-1986
(17) अधिसूचना संख्या एस.ओ. 3787, दिनांक 8-11-1986
(18) अधिसूचना संख्या एस.ओ. 2508, दिनांक 19-9-1987
(19) अधिसूचना संख्या एस.ओ. 3092, दिनांक 7-11-1987
(20) अधिसूचना संख्या एस.ओ. 3581, दिनांक 10-12-1988
(21) अधिसूचना संख्या एस.ओ. 641, दिनांक 17-3-1990
(22) अधिसूचना संख्या एस.ओ. 1469, दिनांक 26-5-1990
(23) अधिसूचना संख्या एस.ओ. 2173, दिनांक 18-8-1990
(24) अधिसूचना संख्या एस.ओ. 3033, दिनांक 17-11-1990
(25) अधिसूचना संख्या एस.ओ. 3414, दिनांक 22-12-1990
(26) अधिसूचना संख्या एस.ओ. 534, दिनांक 23-2-1991
(27) अधिसूचना संख्या एस.ओ. 2235, दिनांक 24-8 1991
(28) अधिसूचना संख्या एस.ओ. 547 (ई) दिनांक 24-7-1992
(29) अधिसूचना संग्या एस.ओ. 466, दिनांक 13-3-1993
(30) अधिसूचना संख्या एस.ओ. 1292, दिनांक 12-6-1993
(31) अधिसूचना संख्या एस.ओ. 685, दिनांक 12-3-1994
(32) अधिसूचना संख्या एस.ओ. 1232, दिनांक 28-5-1994
(33) अधिसूचना संख्या एस.ओ. 1945, दिनांक 13-8-1994
(34) अधिसूचना संख्या एस.ओ. 2451, दिनांक 24-9-1994
(35) अधिसूचना संख्या एस.ओ. 174, दिनांक 28-1-1995
(36) अधिसूचना संख्या एस.ओ. 670, दिनांक 26-9-1996
(37) अधिसूचना संख्या एस.ओ. 665 (ई), दिनांक 5-8-1998
(38) अधिसूचना संख्या एस.ओ. 1835, दिनांक 7-9-1998

(Department of Expenditure)

New Delhi, the 5th August, 1999

S.O. 2274.—In exercise of the Powers conferred by clause (3) of article 77 of the constitution of India, the President hereby makes the following rules further to amend the Delegation of Financial Powers Rules, 1978, namely :—

(1) These rules may be called the Delegation of Financial Powers (Amendment) Rules, 1999.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In Schedule V to the Delegation of Financial Powers Rules, 1978, in the annexure, for serial number 12 and entries relating thereto, the following entries shall be substituted, namely :—

Sl. No. of Item	Item of Expenditure	Monetary limit up to which expenditure can be incurred	Rules, Orders, restrictions or scales subject to which the expenditure shall be incurred
(1)	(2)	(3)	(4)
"12.	Petty Works and repairs :		
	(i) Execution of petty Works and special repairs to Govt. owned buildings, including sanitary fittings, water supply and electric installation in such buildings and repairs to such installations.	Rs. 30,000 in each case.	In exercising these powers the provisions of Rules 137, 141 and 142 of the General Financial Rules, 1963 shall be observed.
	(ii) Ordinary repairs to Government buildings.	Full Powers	
	(iii) Repairs and alterations to hired and requisitioned buildings.	Rs. 30,000 per annum non-recurring and Rs. 6000 per annum recurring	Such expenditure may be incurred only if the landlord refused to meet the charges himself and when the building is released, Govt. should have the right to remove any installation material added to the building. Deptt. of the Central Govt. shall have Power to incur expenditure on sub-items (i) and (iii) upto the monetary limits indicated below :— (i) Rs. 30,000 in each case; (iii) Rs. 50,000 per annum non-recurring Rs. 6,000 per annum recurring.

[No. 1(34)-E.II(A)/97]

NARAIN DAS, Under Secy.

NOTE :—The Delegation of Financial Powers Rules, 1978 published vide S.O. No. 2131, dated 22nd July, 1978 have subsequently been amended by :—

(i) Notification No. S.O. 1187, dated 9-6-1979
(ii) „ No. S.O. 2942, dated 1-9-1979
(iii) „ No. S.O. 2611, dated 4-10-1980
(iv) „ No. S.O. 2164, dated 15-8-1981
(v) „ No. S.O. 2304, dated 5-9-1981
(vi) „ No. S.O. 3073, dated 4-9-1982
(vii) „ No. S.O. 4171, dated 11-12-1982
(viii) „ No. S.O. 1314,'dated 26-2-1983
(ix) „ No. S.O. 2502, dated 4-8-1984
(x) „ No. S.O. 22, dated 5-1-1985
(xi) Corrigendum No. S.O. 1958, dated 11-5-1985
(xii) Notification No. S.O. 3082, dated 6-7-1985
(xiii) „ No. S.O. 3974, dated 24-8-1985
(xiv) „ No. S.O. 5641, dated 21-12-1985
(xv) „ No. S.O. 1548, dated 19-4-1986
(xvi) „ No. S.O. 3183, dated 20-9-1986
(xvii) „ No. S.O. 3787, dated 8-11-1986
(xviii) „ No. S.O. 2508, dated 19-9-1987
(xix) „ No. S.O. 3092, dated 7-11-1987
(xx) „ No. S.O. 3581, dated 10-12-1988
(xxi) No. S.O. 641, dated 17-3-1990

(xxii)	Notificetion	No. S.O. 1469, dated 26-5-1990
(xxiii)	,,	No. S.O. 2173, dated 18-8-1990
(xxiv)	,,	No. S.O. 3033, dated 17-11-1990
(xxv)	,,	No. S.O. 3414, dated 22-12-1990
(xxvi)	,,	No. S.O. 534, dated 23-2-1991
(xxvii)	,,	No. S.O. 2235, dated 24-8-1991
(xxviii)	,,	No. S.O. 547(E), dated 24-7-1992
(xxix)	,,	No. S.O. 466, dated 13-3-1993
(xxx)	,,	No. S.O. 1292 dated 12-6-1993
(xxxi)	,,	No. S.O. 685, dated 12-3-1994
(xxxii)	,,	No. S.O. 1232, dated 28-5-1994
(xxxiii)	,,	No. S.O. 1945, dated 13-8-1994
(xxxiv)	,,	No. S.O. 2451, dated 24-9-1994
(xxxv)	,,	No. S.O. 174, dated 28-1-1995
(xxxvi)	,,	No. S.O. 670, dated 26-9-1996
(xxxvii)	,,	No. S.O. 665(E) dated 5-8-1998
(xxxviii)	,,	No. S.O. 1835, dated 7-9-1998

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 30 जुलाई, 1999

का.आ. 2275.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 8 की उपधारा (1) के खण्ड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, डा. ई.ए.एस. शर्मा, सचिव (आर्थिक कार्य) वित्त मंत्रालय, आर्थिक कार्य विभाग, नई दिल्ली को डा. विजय एल. केलकर के स्थान पर, तत्काल प्रभाव से और अगले आदेशों तक भारतीय रिजर्व बैंक के केन्द्रीय बोर्ड में निदेशक नियुक्त करती है।

[संख्या एफ. 9/9/98 बी.ओ. I]

के. के. मंगल, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 30th July, 1999

S.O. 2275.—In exercise of the powers conferred by clause (d) of sub-section (1) of Section 8 of the Reserve Bank of India Act, 1934 (2 of 1934) the Central Government, hereby nominates Dr. E.A.S. Sarma, Secretary (Economic Affairs), Ministry of Finance, Department of Economic Affairs, New Delhi as a Director on the Central Board of the Reserve Bank of India with immediate, effect and until further orders vice Dr. Vijay L. Kelkar.

[F. No. 9/9/98-B.O. I]

K. K. MANGAL, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 27 जुलाई, 1999

का.आ. 2276.—केन्द्रीय सरकार, भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (क) के अनुसरण में और दिल्ली राष्ट्रीय राजधानी राज्यपाल की सरकार के परामर्श से डा. प्रेम अग्रवाल, 72, अंसारी रोड, दरियागंज, नई दिल्ली को इस अधिसूचना के जारी किए जाने की तारीख से भारतीय आयुर्विज्ञान परिषद् के सदस्य के रूप में नामनिर्दिष्ट किया है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम, की धारा 3 की उपधारा (1) के उपबन्धो के अनुसरण में भारत सरकार के स्वास्थ्य मंत्रालय की अधिसूचना सं. का.आ. 138 तारीख 9 जनवरी, 1960 का निम्नलिखित और संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में, "धारा 3 की उपधारा (1) के खण्ड (क) के अधीन नामनिर्देशित शीर्ष" के नीचे क्रम सं. 24 और उससे संबंधित प्रविष्टियों के पश्चात् निम्नलिखित क्रम संख्यांक और प्रविष्टियां अन्तःस्थापित की जाएंगी, अर्थात्:

"25. डा. प्रेम अग्रवाल,
72, अंसारी रोड, दरियागंज,
नई दिल्ली।

[सं०बी० 11013/16/98 एम.ई. (यू.जी.)]

एस.के. मिश्रा, डैस्क अधिकारी

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 27th July, 1999

S.O. 2276.—Whereas the Central Government in pursuance of clause (a) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and in consultation with the Government of National Capital Territory of Delhi have nominated Dr. Prem Aggarwal, 72, Ansari Road, Darya Ganj, New Delhi to be a member of the Medical Council of India with effect from the date of issue of this notification;

Now, therefore, in pursuance of the provisions of sub-section (1) of section 3 of the said Act, the Central Government hereby makes the following further amendment in the notification of the Government of India in the then Ministry of Health, number S.O. 138, dated the 9th January, 1960, namely :—

In the said notification, under the heading, 'nominated under clause (a) of sub-section (1) of section 3', after serial number 24 and the entries relating thereto, the following serial number and entries shall be inserted, namely :—

"25. Dr. Prem Aggarwal,
72, Ansari Road,
Darya Ganj,
New Delhi."

[No. V. 11013/16/98-ME(UG)]

S. K. MISHRA, Desk Officer

नई दिल्ली, 27 जुलाई, 1999

का.आ. 2277.—केन्द्रीय सरकार भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा 2 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय आयुर्विज्ञान परिषद से परामर्श करने के पश्चात उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिनियम की प्रथम अनुसूची में विद्यमान प्रविष्टियों के पश्चात अंत में निम्नलिखित प्रविष्टियां अंतःस्थापित की जाएंगी, अर्थात् :—

विश्वविद्यालय या आयुर्विज्ञान संस्था	मान्यता प्राप्त आयुर्विज्ञान अर्हता	रजिस्ट्रीकरण के लिए संक्षपाक्षर
(1)	(2)	(3)
डॉ. भीमराव अम्बेडकर विश्वविद्यालय, आगरा।	बैचलर ऑफ मेडिसिन एंड बैचलर ऑफ सर्जरी	एम. बी. बी. एस.
	डॉक्टर ऑफ मेडिसिन (आयुर्विज्ञान)	एम. डी. (आयुर्विज्ञान)
	डॉक्टर ऑफ मेडिसिन (विकृति विज्ञान)	एम. डी. (विकृ. वि.)
	डॉक्टर ऑफ मेडिसिन (भेषजगुण विज्ञान)	एम.डी. (भेगु. वि.)
	मास्टर ऑफ सर्जरी (नेत्र विज्ञान)	एम. एस. (ने. वि.)
	मास्टर ऑफ सर्जरी (शल्य विज्ञान)	एम. एस. (श. वि.)
	मास्टर ऑफ सर्जरी (प्रसूति विज्ञान और स्त्री रोग विज्ञान)	एम. एस. (प्र. वि. और स्त्री रो. वि.)
	डाक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम. डी. (शरीर क्रिया विज्ञान)

(1)	(2)	(3)
	मास्टर ऑफ सर्जरी (शरीर रचना विज्ञान)	एम. एस. (स.र. वि.)
	डिप्लोमा इन आफथलमिक मेडिसिन एंड सर्जरी	डी. ओ. एम. एस.
	डिप्लोमा इन चाइल्ड हैल्थ	डी.सी. एच.
	डिप्लोमा इन मेडिसिन	डी.एम.आर.ई.
	रेडियोलोजी एंड इलेक्ट्रोलोजी	एम. डी (बा. चि. वि.)
	डॉक्टर आफ मेडिसिन (बाल चिकित्सा विज्ञान)	
	डिप्लोमा इन अनेस्थीसियोलोजी	डी.ए.
	डिप्लोमा इन ट्युबरकुलोसिस एंड चेस्ट डिसीजेज	डी. टी. सी. डी.
	डिप्लोमा इन आब्स्ट्रेटिक्स एंड गाइनिकालोजी	डी.जी.ओ.
	डिप्लोमा इन ऑस्थोपैडिक्स	डी. ऑस्थो
	डिप्लोमा इन क्लीनिकल पैथालोजी	डी. सी. पी.
	डाक्टर ऑफ मेडिसिन (मनोविज्ञानीय आयुर्विज्ञान)	एम. डी. (मनोविज्ञानीय) आयुर्विज्ञान
	डाक्टर ऑफ मेडिसिन (सामाजिक और निरोधक आयुर्विज्ञान)	एम. डी. (सा. और नि. आयु.)
	डाक्टर ऑफ मेडिसिन (न्याय आयुर्विज्ञान)	एम. डी. (न्या. आयु.)
	डाक्टर आफ मेडिसिन (संवेदनाहरण विज्ञान)	एम. डी. (संवे वि.)

(ये अर्हताएं सभी मान्यताप्राप्त आयुर्विज्ञान अर्हताएं होंगी जब वे 24 सितम्बर, 1995 को या उसके पश्चात प्रदान की गई हों) ।

[सं.वी- 11015/13/99-एम.ई. (यू जी)]

एस.के. मिश्रा, डेस्क अधिकारी

New Delhi, the 27th July, 1999

S.O.2277.—In exercise of the powers conferred by sub-section 2 of Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government after consulting the Medical Council of India, makes the following further amendments in the First Schedule to the said Act, namely:—

In the said Act. in the First Schedule, after the existing entries, the following entries shall be inserted at the the end, namely:—

University or Medical Institution	Recognised Medical Qualification	Abbreviation for Registration
1	2	3
Dr. Bhim Rao Ambedkar University, Agra.	Bachelor of Medicine and Bachelor of Surgery	M.B.B.S.
	Doctor of Medicine ((Medicine)	M.D. (Med,)
	Doctor of Medicine (Pathology)	M.D. (Path.)
	Doctor of Medicine (Pharmacology)	M.D. (Pharm.)
	Master of Surgery (Opthalmology)	M.S. (Opth.)

1	2	3
	Master of Surgery (Surgery)	M.S.(Surg.)
	Master of Surgery (Obstetrics and Gynaecology)	M.S. (Obst. & Gynae.)
	Doctor of Medicine (Physiology)	M.D. (Physiology)
	Master of Surgery (Anatomy)	M.S. (Ana.)
	Diploma in Opthalmaic Medicine and Surgery.	D.O.M.S.
	Diploma in Child Health	D.C.H.
	Diploma in Medicine Radiology and Electrology	D.M.R.F.
University of Medical Instt.	Recognised Medical Qualification	Abbreviation for Registration
	Doctor of Medicine (Paediatrics	M.D. (Paed.)
	Diploma in Anaesthesiology)	D.A.
	Diploma in Tuberculosis and Chest Diseases.	D.T.C.D.
	Diploma in Obsetrics and Gynaecology.	D.G.O.
	Diploma in Orthopaedics	D. Ortho.
	Diploma in Clinical Pathology	D.C.P.
	Doctor of Medicine (Psychological Medicine)	M.D. (Psychological Med.)
	Doctor of Medicine (Social and Preventive Medicine)	M.D. (Soc. & Pre. Med.)
	Doctor of Medicine (Forensic Medicine)	M.D. (Foren. Med.)
	Doctoor of Medicine (Anaesthesiology)	M.D. (Anaes).

(These qualifications shall be recognised medicinal qualification when granted on or after the 24th September, 1995).

[No. V. 11015/13/99-ME(UG)]
S. K. MISHRA, Desk Officer

नई दिल्ली, 27 जुलाई, 1999

का.आ. 2278.—केन्द्रीय सरकार, भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 13 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय आयुर्विज्ञान परिषद् से परामर्श करने के पश्चात् उक्त अधिनियम की तृतीय अनुसूची के भाग 2 में निम्नलिखित और संशोधन करती है, अर्थात् :—

तृतीय अनुसूची के उक्त भाग 2 में, निम्नलिखित प्रविष्टियां अन्त में जोड़ी जाएगी, अर्थात् :

"आयुर्विज्ञान में डाक्टर ऑफ फिलॉसफी (पी.एच.डी.)	सुप्रीम अटेस्टेशन कमीशन, मास्को,

(यह अर्हता, वर्ष 1989 तक उक्त पी.एच.डी. पाठ्यक्रम पूरा करने के लिए प्रवेशनार्थ विद्यार्थियों की बाबत सुप्रीम अटेस्टेशन कमीशन, मास्को द्वारा प्रदान किया गया मान्यताप्राप्त अर्हता होगा।)"

[फा.सं. वि. 11025/34/95-एम.ई. (यू.जि.)]
एस.के. मिश्र, डैस्क अधिकारी

पाद टिप्पण : भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की तीसरी का भाग II भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 के भाग के रूप में भारत के राजपत्र (असाधारण) के भाग II, धारा 1 में दिनांक 31 दिसम्बर, 1956 के अंक संख्या 83 के तहत प्रकाशित किया गया था।

New Delhi, the 27th July, 1999

S.O. 2278.—In exercise of the powers conferred by sub-section (4) of section 13 of the Indian

Medical Council Act, 1956 (102 of 1956), the Central Government after consulting the Medical Council of India, hereby makes the following further amendments in Part II of the Third Schedule to said Act, namely :—

In the said Part II of the Third Schedule, the following entries shall be added at the end, namely :—

"Doctor of Philosophy in Medical Sciences (Ph.D.)	Supreme Attestation Commission, Moscow.

(This qualification shall be recognised qualification when granted by Supreme Attestation Commission, Moscow in respect of the students admitted for undergoing the said Ph. D. course up to the year 1989)".

[No. V. 11025/34/95-ME(UG)]

S. K MISHRA, Desk Officer

FOOT NOTE :

The part II of the Third Schedule to the Indian Medical Council Act, 1956 (102 of 1956) was published as a part of the Indian Medical Council Act, 1956 in Part II Section 1 of the Gazette of India (Extraordinary vide issue No. 83, dated the 31st December, 1956).

कृषि मंत्रालय

(कृषि और सहकारिता विभाग)

(विपणन प्रभाग)

आदेश

नई दिल्ली, 29 जुलाई, 1999

का.आ. 2279.—राष्ट्रपति, केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम, 1965 के नियम 12 के उपनियम (2) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और भारत सरकार के कृषि मंत्रालय के आंशिक परिवर्तन आदेश संख्या का.आ. 1886 तारीख 10 मई, 1986 में जहां तक उसका संबंध विपणन और निरीक्षण निदेशालय में सर्व श्री आर. के. सक्सेना, कनिष्ठ रसायनज्ञ, के. के. गर्ग, कनिष्ठ रसायनज्ञ और शीशपाल सिंह ऊपर श्रेणी लिपिक के विरुद्ध प्रारम्भ की गई विभागीय कार्यवाहियों से है, विपणन और निरीक्षण निदेशालय में संयुक्त कृषि विपणन सलाहकार डा० जी. आर. भाटिया को उपरोक्त नियमों के प्रयोजनों के लिए ऊपर नामित पदधारियों की बाबत अनुशासनिक प्राधिकारी विनिर्दिष्ट करते हैं।

[नं. 48029/1/98 एम. 1]

एस.के. विश्वास, निदेशक (कृषि विपणन)

MINISTRY OF AGRICULTURE

(Department of Agriculture and Cooperation)

(Marketing Division)

ORDER

New Delhi, the 29th July, 1999

S.O. 2279.—In exercise of the powers conferred by clause (b) of sub-rule (2) of rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and in partial modification of the Order of the Government of India in the Ministry of Agriculture, number S.O. 1886 dated the 10th May, 1986 in so far as it relates to the departmental proceedings initiated against S|Shri R. K. Saxena, Junior Chemist, K. K. Garg, Junior Chemist and Shishpal Singh, Upper Division Clerk in the Directorate of Marketing and Inspection, the President hereby specifies Dr. G. R. Bhatia, Joint Agricultural Marketing Adviser in the Directorate of Marketing & Inspection as the disciplinary authority in respect of above named officials for the purposes of the aforesaid rules.

[No. 48029|1|98-M-I]

S. K. BISWAS, Director (Agricultural Marketing)

(पशुपालन एवं डेयरी विभाग)

नई दिल्ली, 6 अगस्त, 1999

का.आ. 2280.—पशुधन आयात अधिनियम, 1898 (1898 का 9) के खंड-2 की धारा (ख) और खंड 3 के उपखंड (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार इन देशों में जहां टी.एस.ई. ग्रुप के रोगों की घटनाओं की जानकारी मिली है से जीवित गौपशु, भैंस, भेड़ और बकरी, बोवाईन और केपराईन भ्रूण/ओवा/वीर्य, ताजा मांस, मांस उत्पाद, टिशू/आर्गेन्स, रयूमिनेन्ट मूल के मांस और बोन मील के भारत में आयात पर एतद्वारा प्रतिबंध लगाती है।

यह अधिसूचना भारत सरकार के दिनांक 21 सितम्बर, 1998 की पूर्व अधिसूचना सं. 50-31/98-एल.डी.टी. (ए.क्यू.) के अधिक्रमण में जारी की गई है।

[सं. 50-31/98-एल.डी.टी. (ए.क्यू.)]
पवन रैना, संयुक्त सचिव

(Department of Animal Husbandry and Dairying)
New Delhi, the 6th August, 1999

S.O. 2280.—In exercise of the powers conferred by clause (b) of Section 2 and sub-section (i) of Section 3 of the Livestock Importation Act, 1898 (9 of 1898), the Central Government hereby prohibits the import into India of live cattle, buffalo, sheep and goat; bovine, ovine and caprine embryos/ova/semen; fresh meat, meat products, tissue/organs, meat and bone meal of ruminant origin from countries where incidence of TSE group of diseases have been reported.

This notification is issued in supersession of the earlier notification of Government of India No. 50-31/98-LDT(AQ) dated 21st September, 1998.

[No. 50-31/98-LDT (AQ)]
PAVAN RAINA, Jt. Secy.

जल भूतल परिवहन मंत्रालय

(नौवहन पक्ष)

नई दिल्ली, 5 अगस्त, 1999

का.आ. 2281.—केन्द्रीय सरकार, वाणिज्यिक पोत परिवहन अधिनियम, 1958 (1958 का 44) की धारा 350 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार जल भूतल परिवहन मंत्रालय (तत्कालीन नौवहन और परिवहन मंत्रालय) की तारीख 3 अक्तूबर, 1986 की अधिसूचना सं. का.आ. 3617 का अधिक्रमण करते हुए नीचे दी गई सारणी के स्तम्भ (2) विनिर्दिष्ट अधिकारियों को, उक्त धारा के प्रयोजनों के लिए नियुक्त करती है, जो उक्त सारणी के स्तम्भ (3) की तत्स्थानी प्रविष्टि में विनिर्दिष्ट महापत्तनों अथवा भारत के सामुद्रिक क्षेत्र में पोतों की बाबत उक्त धारा के अन्तर्गत शक्तियों का प्रयोग करेंगे, अर्थात् :—

क्रम सं.	अधिकारी का नाम	महापत्तन/भारत के सामुद्रिक क्षेत्र का नाम
1	2	3
1.	निदेशक (समुद्री विभाग) अथवा उनकी अनुपस्थिति में उप निदेशक (समुद्री), कलकत्ता महापत्तन	कलकत्ता
2.	प्रबंधक (सामुद्रिक प्रचालन) हल्दिया महापत्तन	हल्दिया
3.	उप संरक्षक अथवा उनकी अनुपस्थिति में बंदरगाह मास्टर अथवा इन दोनों की अनुपस्थिति में निदेशक (प्रदूषण नियंत्रण), मुंबई महापत्तन	मुंबई
4.	उप संरक्षक अथवा उनकी अनुपस्थिति में बंदरगाह मास्टर अथवा इन दोनों की अनुपस्थिति में वरिष्ठ डाक मास्टर चेन्नई महापत्तन	चेन्नई

1	2	3
5.	उप संरक्षक, महापत्तन	अन्य सभी महापत्तन
6.	तट रक्षक अधिनियम, 1978 (1978 का 30) की धारा 3 के अर्थ के अन्तर्गत तट रक्षक अधिकारी	भारत का सामुद्रिक क्षेत्र

स्पष्टीकरण :—इस अधिसूचना के प्रयोजन के लिए —

(क) "महापत्तन" शब्द का वही अर्थ है जो भारतीय पत्तन अधिनियम, 1908 (1908 का 15) में है,

(ख) "भारत का सामुद्रिक क्षेत्र" पद का वही अर्थ है जो तट रक्षक अधिनियम, 1978 (1978 का 30) में है ।

[मिसिल सं. एस आर-11011/3/98-एम ए)]

संजय विक्रम सिंह, अवर सचिव

MINISTRY OF SURFACE TRANSPORT

(Shipping Wing)

New Delhi, the 5th August 1999.

S.O. 2281.—In exercise of the powers conferred by sub-section (1) of section 356G of the Merchant Shipping Act, 1958 (44 of 1958) and in supersession of the notification of the Government of India in the Ministry of Surface Transport (the then Ministry of Shipping and Transport) No. S.O.3617, dated the 3rd October, 1986, the Central Government hereby appoints officers specified in column (2) of the Table below for the purposes of the said section who shall exercise the powers under the said section in respect of ships in major ports or maritime zone of India, specified in the corresponding entry in column (3) of the said Table, namely :—

S. No.	Name of the officer	Name of major port/maritime zone of India
(1)	(2)	(3)
1.	The Director (Marine Deptt.) or in his absence, the Deputy Director (Marine), Major Port of Calcutta	Calcutta
2.	The Manager (Marine Operations), Major Port of Haldia	Haldia
3.	The Deputy Conservator or in his absence the Harbour Master or in the absence of both, the Director (Pollution Control), Major Port of Mumbai	Mumbai
4.	The Deputy Conservator or in his absence the Harbour Master or in the absence of both, the Senior Dock Master, Major Port of Chennai	Chennai
5.	The Deputy Conservator, Major Ports	All other major ports
6.	Officers of the Coast Guard within the meaning of section 3 of the Coast Guard Act, 1978 (30 of 1978)	Maritime Zone of India

Explanation—For the purposes of this notification,—

(a) the expression "major port" has the same meaning as assigned to it in the Indian Ports Act, 1908 (15 of 1908).

(b) the expression "Maritime Zone of India" has the same meaning as assigned to it in the Coast Guard Act, 1978 (30 of 1978).

[F. No. SR-11011/3/98-MA]

SANJAY VIKRAM SINGH, Under Secy.

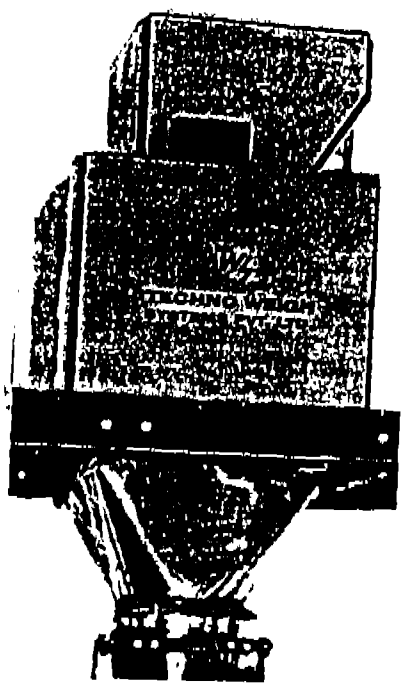
खाद्य और उपभोक्ता मामले मंत्रालय

(उपभोक्ता मामले विभाग)

नई दिल्ली, 2 अगस्त, 1999

का. आ. 2282.—केन्द्रीय सरकार को, विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात्, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (आकृति दी गई है) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अंकक सूचन सहित स्वचालित तोलन और बोरा वस्त्र मशीन के मॉडल का, जिसके ब्रांड का नाम "बेगिंग वेयर" है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण मैसर्स टेक्नो वे सिस्टम्स प्राइवेट लिमिटेड, 276/8, एलाइड काम्पलेक्स, जी. आई. डी. इंडस्ट्रियल इस्टेट, मकरपुरा, वडोदरा-390010 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/99/36 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।



TAB ON50 - P1
BAGGING WEIGHER

यह माडल अंकक सूचन सहित स्वचालित तोलन और बोरावस्त्र मशीन का है, जिसकी अधिकतम क्षमता 50 किलोग्राम और न्यूनतम क्षमता 15 किलोग्राम है। मशीन दानेदार या चूर्ण उत्पादों के तोलन और बोरावस्त्र के लिए उपयुक्त है। प्रदर्श इकाई प्रकाश उत्सर्जक डायोड प्रकार की है। उपकरण 220 वोल्ट और 50 हर्ट्ज आवृत्ति की प्रत्यावर्ती धारा प्रदाय पर कार्य करता है।

[फा. सं. डब्ल्यू एम-21(61)/98]

पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

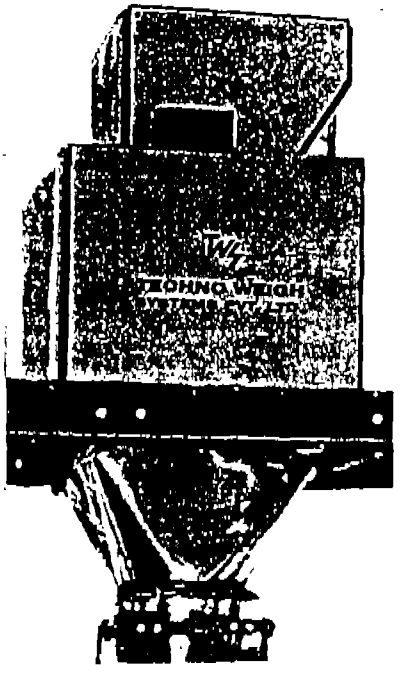
MINISTRY OF FOOD AND CONSUMER AFFAIRS

(Department of Consumer Affairs)

New Delhi, the 2nd August, 1999

S. O. 2282.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (given in the figure), is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976), and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of model of automatic weighing and bagging machine with digital indication (hereinafter referred to as the model) of 'TABGN 50-P1' series with brand name 'BAGGING WEIGHER' manufactured by M/s.Techno Weigh Systems private Limited, 276/8, Allied Complex, G.I.D.C. Industrial Estate, Makarpura, Baroda-390 010 and which is assigned the approval mark IND/09/99/36;



TAB GN50 - P1
BAGGING WEIGHER

The Model is an automatic weighing and bagging machine with digital indication of maximum capacity 50 kg and minimum capacity of 15 kg. The machine is suitable for weighing and bagging of granular or powder products. The display unit is of Light Emitting Diode (LED) type. The instrument operates on 220 Valts, 50 Hertz alternate current power supply.

[F. No. WM-21(61)/98]

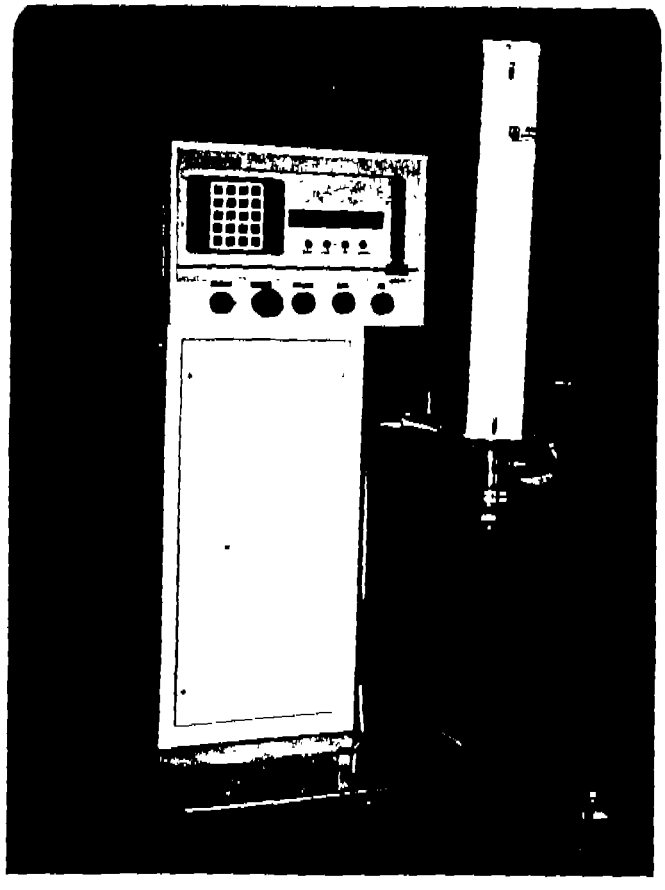
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 2 अगस्त, 1999

का. आ. 2283.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात्, यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (आकृति नीचे दी गई है) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, "एडीपी-सी एफ एम" श्रृंखला की, अंकक प्रदर्शन सहित स्वचालित तोलन और भराई मशीन के मॉडल का, जिसके ब्रांड का नाम "एडप्रो आटो मेशन" है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण मैसर्स एडप्रो आटोमेशन श्री लक्ष्मी रंगा स्वामी निलय थाम्पापा कम्पाउंड, नेताजी नगर, दशारहल्ली, बंगलौर-560057 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/98/223 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

यह माडल (आकृति नीचे दी गई है) के अंकक प्रदर्शन सहित स्वचालित तोलन और भराई मशीन की है, जिसकी अधिकतम क्षमता 15 किलोग्राम और सत्यापन मापमान अन्तराल (ई) 10 ग्राम है। उपकरण 220 वोल्ट और 50 हर्ट्ज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है। प्रदर्श प्रकाश उत्सर्जन डायोड प्रकार का है।



और, केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि माडल के इस अनुमोदन प्रमाणपत्र के अन्तर्गत, उसी श्रृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा स्वचालित तोलन और भराई मशीन भी होगी, जिसकी अधिकतम क्षमता 5 किलोग्राम से 30 किलोग्राम होगी जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित मॉडल का विनिर्माण किया गया है, और जिसके सत्यापन मापमान का 1×10 के, 2× 10 के और 5×10 के है, के धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य है।

[फा. सं. डब्ल्यू एम-21(130)/97]

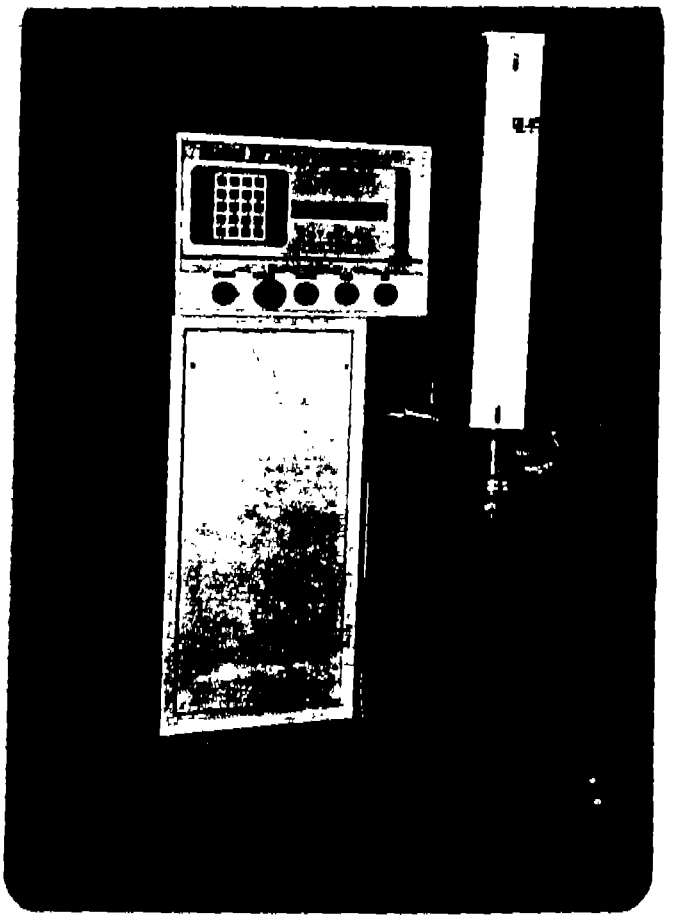
पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 2nd August, 1999

S. O. 2283.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (the figure given below), is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of model of the automatic weighing and filling machine with digital indication of "ADP-CFM" series and with brand name 'ADPRO AUTOMATION' (hereinafter referred to as the model) manufactured by M/s. Adpro Automation, Sri Laxmi Rangaswamy Nilaya, Thammappa Compound, Netaji nagar, Dasarhalli, Bangalore-560 057 and which is assigned the approval mark IND/09/98/223;

The model (figure given below) is an automatic weighing and filling machine with digital indication with a maximum capacity of 15 kilogram and scale interval of 10 gram. The instrument operates on 220 Volts, 50 Hertz alternate current power supply. The indicator is of Light Emitting Diode type.



Further, in exercise of the powers conferred by sub-section (12) of the said section the Central Government hereby declares that this certificate of approval of the model shall also cover the automatic weighing and filling machine of same series with maximum capacity in the range of 5 kilogram to 30 kilogram and with scale interval of 1×10^k, 2×10^k and 5×10^k, k being a positive or negative whole number or equal to zero, manufactured by the same manufacturer with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[F. No. WM-21(130)/97]

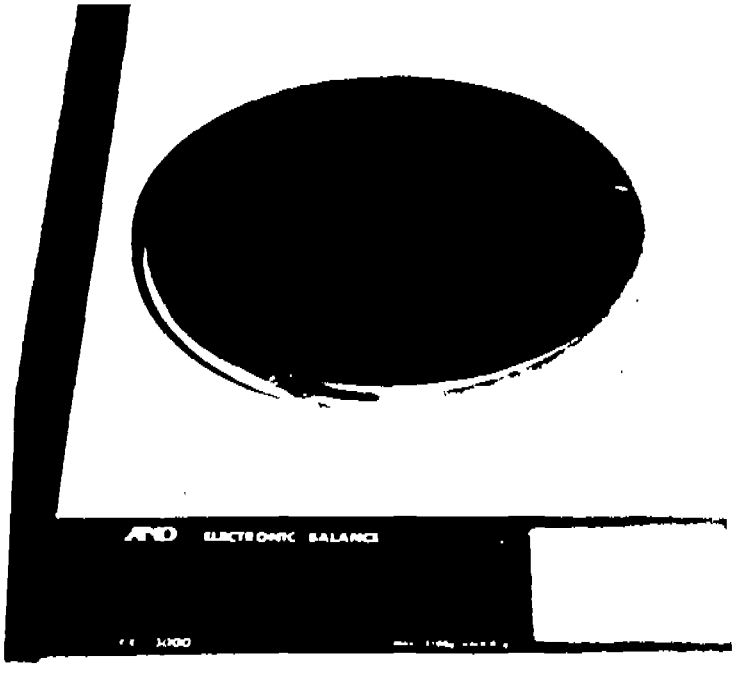
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 2 अगस्त, 1999

का. आ. 2284.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात्, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और संभावना यह है कि अविरत उपयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और परिवर्तित दशाओं में उपयुक्त सेवा करता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, वर्ग I यथार्थता (विशेष यथार्थता) वाली "एफ एक्स" शृंखला की, अंकक प्रदर्श सहित अस्वचालित मेजतल तोलन उपकरण के माडल का, जिसके ब्रांड का नाम "एण्ड" है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण मैसर्स इंड लैब इम्पेक्स, पी पी-107, मौर्या इंक्लेव, पीतमपुरा, नई दिल्ली-110034 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/98/215 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

यह माडल (आकृति देखें) विशेष यथार्थता (यथार्थता वर्ग I) का तोलन उपकरण है, जिसकी अधिकतम क्षमता 3100 ग्राम और न्यूनतम क्षमता 1 ग्राम है। सत्यापन मापमान अन्तराल (ई) 10 मिली ग्राम है। भारग्राही वृत्ताकार है जिसका व्यास 150 मिलीमीटर है। तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है। प्रदर्श द्रव क्रिस्ट्रल डायोड प्रकार का है।



और, केन्द्रीय सरकार उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाणपत्र के अन्तर्गत, उसी शृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धान्त, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माण किया गया है और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 50,000 (एन ≤50,000) बराबर है तथा जिसका "ई" मान 1×10 के, 2×10 के और 5×10 के, हैं के धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य है।

[फा. सं. डब्ल्यू एम-21(136)/97]

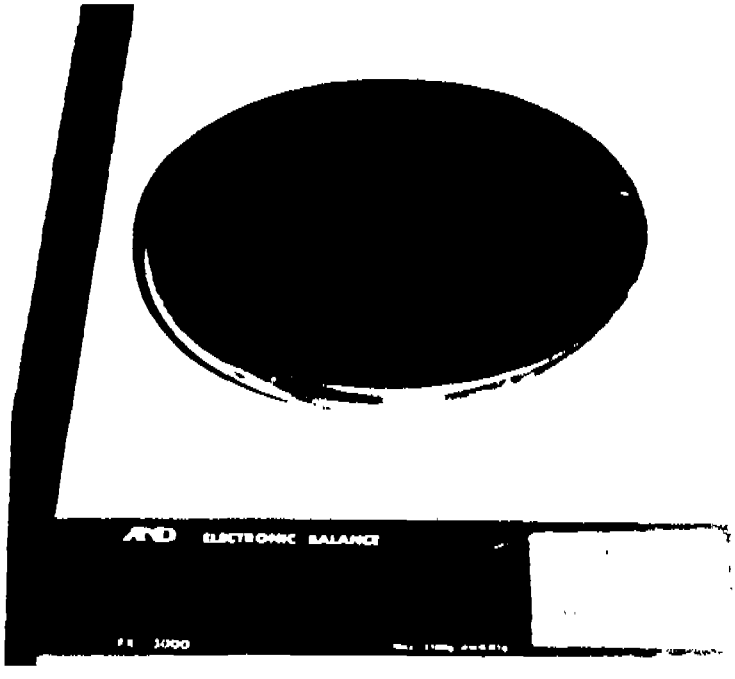
पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 2nd August, 1999

S. O. 2284.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below), is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the model of non-automatic weighing instrument of table top type with digital indication of 'FX' series of special accuracy class (Accuracy class I) and with brand name "AND" (hereinafter referred to as Model), manufactured by M/s. Indlab Impex, pp 107, Maurya Enclave, Pitampura, New Delhi-110034 and which is assigned the approval mark IND/09/98/215;

The model is a special accuracy (accuracy class I) weighing instrument with a maximum capacity of 3100 g and minimum capacity of 1g. The verification scale interval (e) is 10 mg. The load receptor is of circular shape with a diameter of 150 millimetre. The instruments operates on 220 volt, 50 hertz alternate current power supply. The display is of liquid crystal diode type.



And further, in exercise of the power conferred by sub-section (12) of section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the model shall also cover the weighing instruments of same series with the number of scale division greater than or equal to 50,000 ($n \geq 50,000$) and with 'e' value to 1×10^k, 2×10^k and 5×10^k, k being a positive or negative whole number or equal to zero, manufactured by the same manufacturer with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[F. No. WM 21(136)/97]

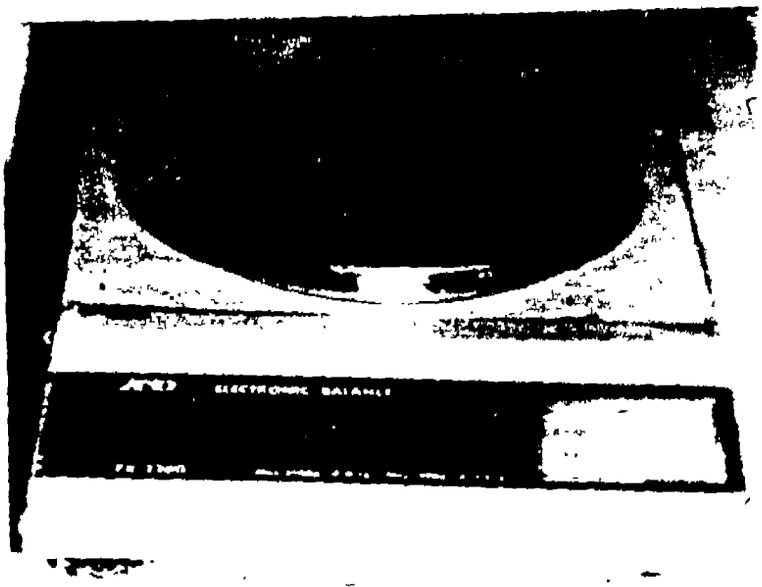
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 2 अगस्त, 1999

का. आ. 2285.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात्, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और संभावना यह है कि अविरत उपयोग की अवधि में भी उक्त माडल यथार्थता बनाए रखेगा और परिवर्तित दशाओं में उपयुक्त सेवा करता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, वर्ग II यथार्थता (उच्च यथार्थता) वाली "एफ एक्स" शृंखला की, अंकक प्रदर्श सहित अस्वचालित मेजतल तोलन उपकरण के माडल का, जिसके ब्रांड का नाम "एण्ड" है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण मैसर्स हैंडवेल इम्पेक्स, पी पी-107, मौर्या इंक्लेव, पीतमपुरा, नई दिल्ली-110034 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/98/216 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

यह माडल (आकृति देखें) उच्च यथार्थता (यथार्थता वर्ग II) का तोलन उपकरण है, जिसकी अधिकतम क्षमता 3100 ग्राम है इसकी दोहरी तोलन श्रेणी 600/3100 ग्राम है। सत्यापन मापमान अन्तराल (ई) 10 मिलीग्राम/100 मिलीग्राम है। न्यूनतम क्षमता 500 मिलीग्राम है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। भारग्राही वृत्ताकार है। जिसका व्यास 150 मिलीमीटर है। उपकरण 230 वोल्ट और 50 हर्ट्ज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है। प्रदर्श द्रव किस्ट्रल डायोड प्रकार का है।



और, केन्द्रीय सरकार उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाण-पत्र के अन्तर्गत, उसी शृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धान्त, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माण किया गया है और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 1,00000 (एन ≤ 1,00,000) बराबर है तथा जिसका "ई" मान 1×10 के, 2×10 के और 5×10 के हैं के धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य है।

[फा. सं. डब्ल्यू एम-21(136)/97]

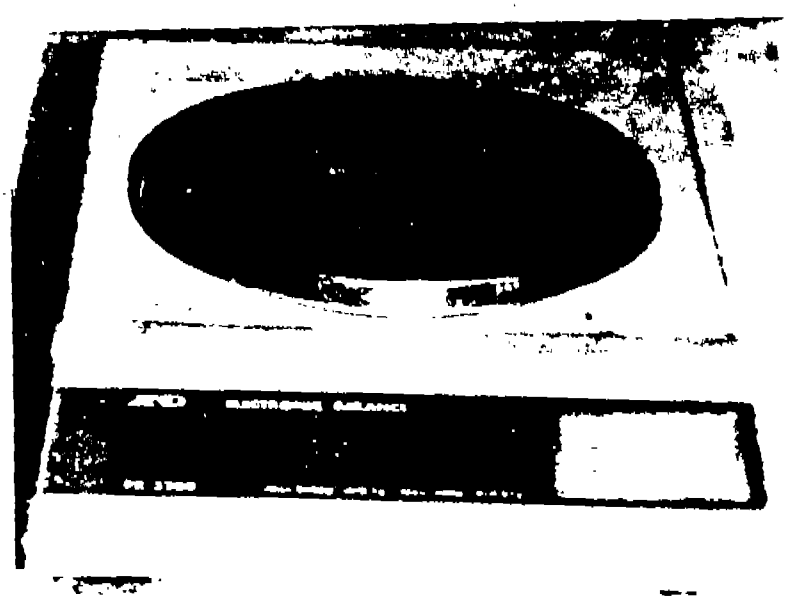
पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 2nd August, 1999

S. O. 2285.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below), is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976), and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of model of non-automatic weighing instrument of table top type with digital indication of 'FX' series of High accuracy class (Accuracy class II) and with brand name "AND" (hereinafter referred to as Model), manufactured by M/s. Indlab Impex, PP 107, Maurya Enclave, Pitampura, New Delhi-110034 and which is assigned the approval mark IND/09/98/216;

The model (see figure) is a High accuracy (accuracy class II) weighing instrument with a maximum capacity of 3100g and it has a dual weighing range of 600/3100 gram with verification scale interval (e) 10 mg/100 mg . The minimum capacity is 500 mg. The load receptor is of circular shape with a diameter of 150 millimetre. The instruments operates on 220 volt, 50 hertz alternate current power supply. The display is of liquid crystal diode type.



Further, in exercise of the power conferred by sub-section (12) of section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instruments of same series with maximum number of verification scale interval (n) less than or equal to 1,00,000 ($n \leq 1,00,000$) and with 'e' value to 1×10^k, 2×10^k and 5×10^k, k being a positive or negative whole number or equal to zero, manufactured by the same manufacturer with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[F. No. WM-21(136)/97]

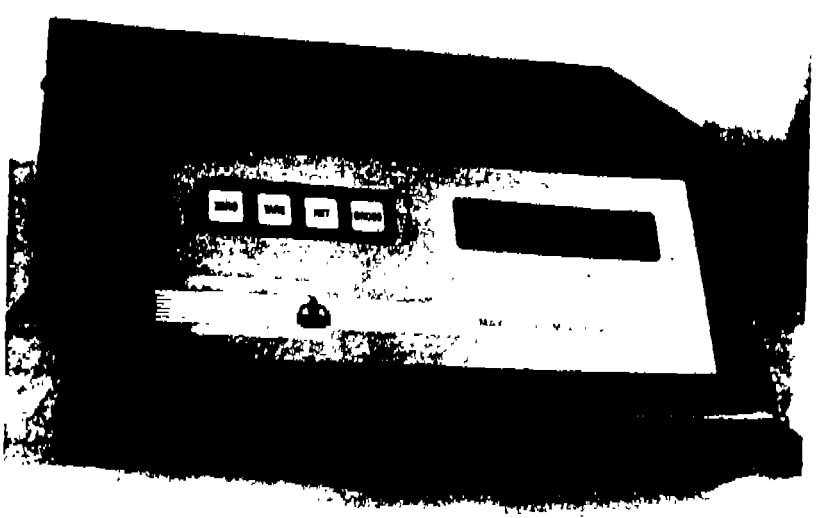
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 3 अगस्त, 1999

का. आ. 2286.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात्, यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (आकृति नीचे दी गई है) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक अधिनियम (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात संभावना यह है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, वर्ग III यथार्थता (मध्यम यथार्थता) वाली "टी एम" शृंखला की, (यांत्रिक तुला चौकी का अंकक प्रदर्शन सहित) स्वतःसूचक, अस्वचालित, इलेक्ट्रानिक, संपरिवर्तन किट मशीन के माडल का, जिसके ब्रांड का नाम "प्रीसी टेक" है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण मैसर्स इप्रीसो टेक वेइंग सिस्टम्स, फैक्ट्री, 118, विशाल इंडस्ट्रियल एस्टेट बसई (पूर्व) जिला थाणे-401210 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/99/16 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है ;

यह माडल (आकृति देखें) मध्यम यथार्थता (यथार्थता वर्ग III) का तोलन उपकरण है, जिसकी अधिकतम क्षमता 30000 किलोग्राम और न्यूनतम क्षमता 200 किलोग्राम है । सत्यापन मापमान अन्तराल (ई) 10 किलो ग्राम है । इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रभाव है । द्रव क्रिस्टल प्रदर्श तोलन परिणाम उपदर्शित करता है । उपकरण 230 वोल्ट और 50 हर्ट्ज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है ।



और, केन्द्रीय सरकार, उक्त अधिनिम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि माडल के इस अनुमोदन प्रमाण-पत्र के अन्तर्गत, उसी शृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धान्त, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माण किया गया है और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 10,000 (एन ≤ 10,000) से कम या उसके बराबर है तथा जिसका "ई" मान 1, 2, 5 शृंखला का है ।

[फा. सं. डब्ल्यू० एम०-21(97)/97]

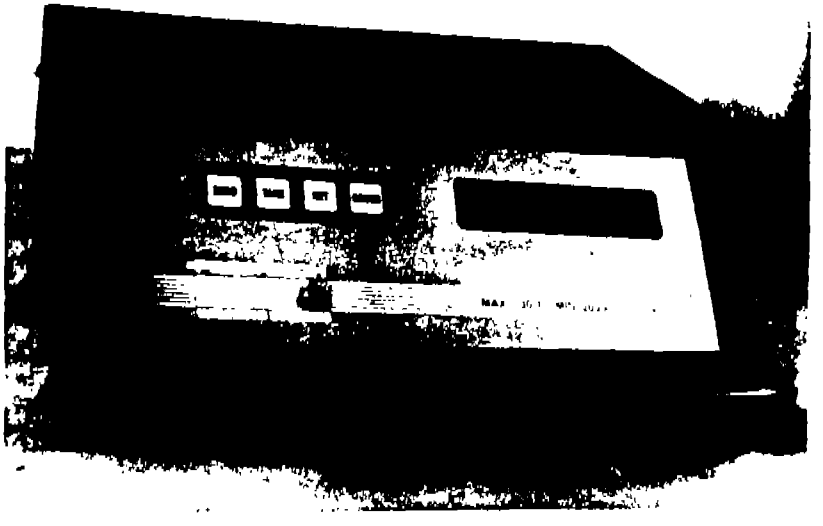
पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 3rd August, 1999

S. O. 2286.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain the accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of Section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the model of the self-indicating, non-automatic, electronic conversion kit for converting mechanical weighbridge into machines with digital display of type "TM" series of class III (medium accuracy) and with brand name "PRECI-TECH" (hereinafter referred to as the model) manufactured by M/s Preci-Tech Weighing Systems, Factory, 118, Vishal Industrial Estate, Vasia (East), Dist Thani-401210, and which is assigned the approval mark IND/09/99/16;

The said model (see the figure) is a medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 30000 kg and minimum capacity of 200 kg. The verification scale interval (e) is 10 kg . It has a tare device with a 100 percent subtractive retained tare effect. The liquid crystal display indicatges the weighing result. The instrument operates on 230 volts, and frequency 50 hertz, alternate current power supply.



Further, in exercise of the powers conferred by sub-section (12) of the Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum number of verification scale interval (n) less than or equal to 10,000 ($n \leq 10,000$) and wih 'e' value of 1, 2 5 series manufactured by the same manufacturer in accordance with the small principles, design and with the same materials with which, the approved model has been manufactured.

[F. No. WM-21(97)/97]

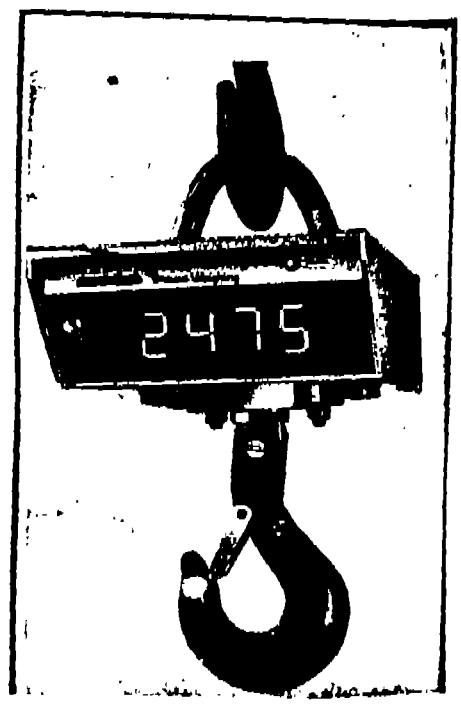
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 3 अगस्त,1999

का. आ. 2287.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात्, यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (आकृति नीचे दी गई है) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, "एच एच" वाली शृंखला की, स्वतःसूचक, अस्वचालित, स्केल के माडल का, जिसके ब्रांड का नाम "हीरो" है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण मैसर्स हीरो हाई-टेक स्केल लिमिटेड, 445 साथे रोड़, गणपथ, कोयम्बटूर-641006 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/99/128 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है;

यह माडल (आकृति देखें) मध्यम यथार्थता (यथार्थता वर्ग III) का तोलन उपकरण है, जिसकी अधिकतम क्षमता 100 किलोग्राम और न्यूनतम क्षमता 400 ग्राम है। सत्यापन मापमान अन्तराल (ई) 20 ग्राम है। इसमें एक आद्योयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आद्योयतुलन प्रभाव है। भार ग्राही भार लटकाने के लिए हुक प्रकार का है। प्रकाश उत्सर्जक डायोड प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्टज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि माडल के इस अनुमोदन प्रमाण-पत्र के अन्तर्गत, उसी शृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धान्त, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माता किया गया है और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 10,000 (एन ≤ 10,000) से कम या उसके बराबर है तथा जिसका "ई" मान 1, 2, 5 शृंखला का है।

[फा. सं. डब्ल्यू० एम०-21(98)/97]

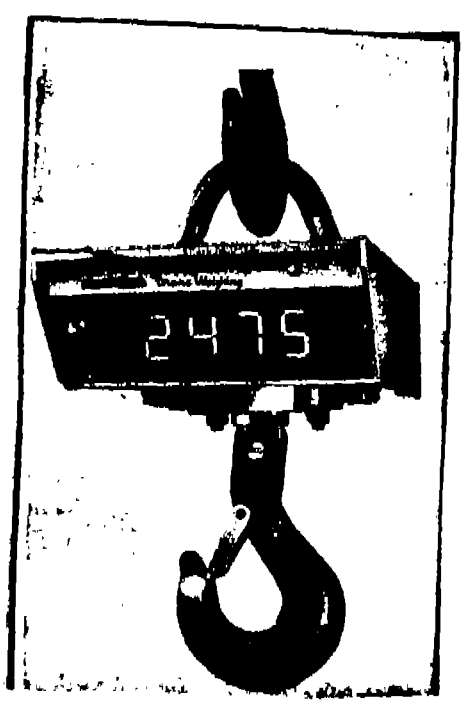
पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 3rd August, 1999

S. O. 2287.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain the accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of Section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the model of the self-indicating, non-automatic, hanging scale of type "HH" series and with brand name "HERO" (hereinafter referred to as the model) manufactured by M/s Hero Hi-Tech Scales Limited, 445, Sathy Road, Ganapathy, Coimbatore-641006, and which is assigned the approval mark IND/09/98/128;

The said model is a medium accuracy (accuracy class III) hanging scale with a maximum capacity of 100 kg and minimum capacity of 400 g. The verification scale interval (e) is 20 g . It has a tare device with a 100 percent subtractive retained tare effect. The load receptor is of hook type to suspend the load. The light emitting diode display indicates the weighing result. The instrument operates on 230 volts and frequency 50 hertz, alternate current power supply;



Further, in exercise of the powers conferred by sub-section (12) of the Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum number of verification scale interval (n) less than or equal to 10,000 ($n \leq 10,000$) and with 'e' value to ,1 2 , 5 series manufactured by the same manufacturer in accordance with the same principles, design and with the same materials with which, the approved model has been manufactured.

[F. No. WM-21(98)/97]

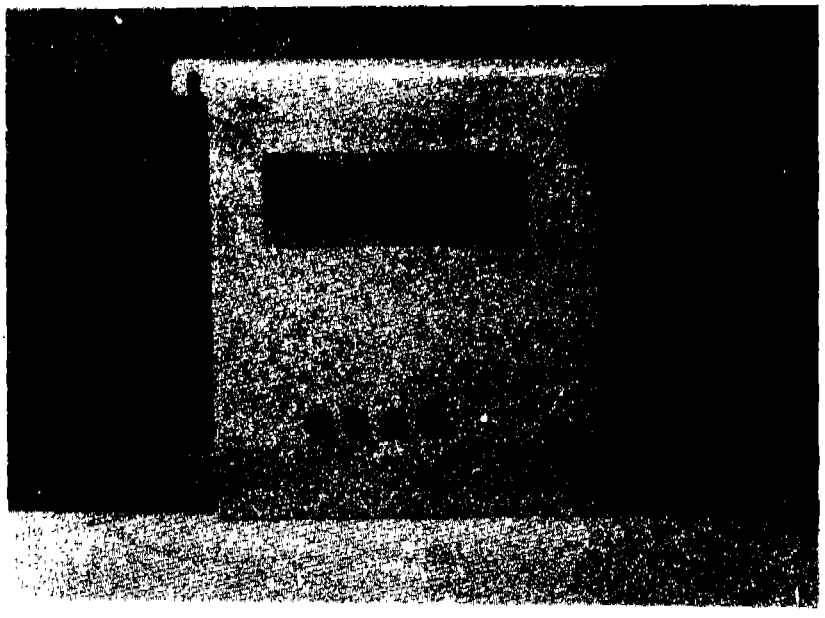
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 3 अगस्त,1999

का. आ. 2288.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात्, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (आकृति नीचे दी गई है) बाट और माप मानक अधिनियम, 1976 (1976 का 60)बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अत:, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मध्यम यथार्थता वर्ग (यथार्थता वर्ग III) वाली "के पी सी 1000" शृंखला की स्वत:सूचक, अस्वचालित, इलेक्ट्रानिक, अंकक सूचना सहित अस्वचालित उपकरण (तुला चौकी की संपरिवर्तनीय किट) के माडल का, (जिसे इसमें इसके पश्चात् माडल कहा गया है) जिसके ब्रांड का नाम कोमल है और जिसका विनिर्माण मैसर्स कोमल प्रोसेस कंट्रोल्स, ए-32 मनीष काम्पलेक्स, 10 कावेंट रोड, बंगलौर-560025 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/99/32 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

यह माडल अंकक सूचन सहित अस्वचालित मध्यम यथार्थता वर्ग (यथार्थता वर्ग III) का तोलन उपकरण है, जिसकी अधिकतम क्षमता 30 टन है और न्यूनतम क्षमता 100 किलोग्राम है। सत्यापन मापमान अन्तराल (ई) 5 किलोग्राम है। प्रदर्श इकाई प्रकाश उत्सर्जक डायोड प्रकार की है। उपकरण 230 वोल्ट और 50 हर्टज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा(12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाण-पत्र के अन्तर्गत, उसी शृंखला के उसी मेक, और यथार्थता वर्ग का ऐसा तोलन उपकरण भी होगा, जिसकी अधिकतम क्षमता 50 टन से 100 टन की श्रेणी का है और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 10,000 (एन $\leq$ 10,000) तक है तथा जिसका "ई" मान 1 ×10 के. 2 × 10 के. और 5 × 10 के. है, के धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य है जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माण किया गया है।

[फा. सं. डब्ल्यू० एम०-21(125)/97]

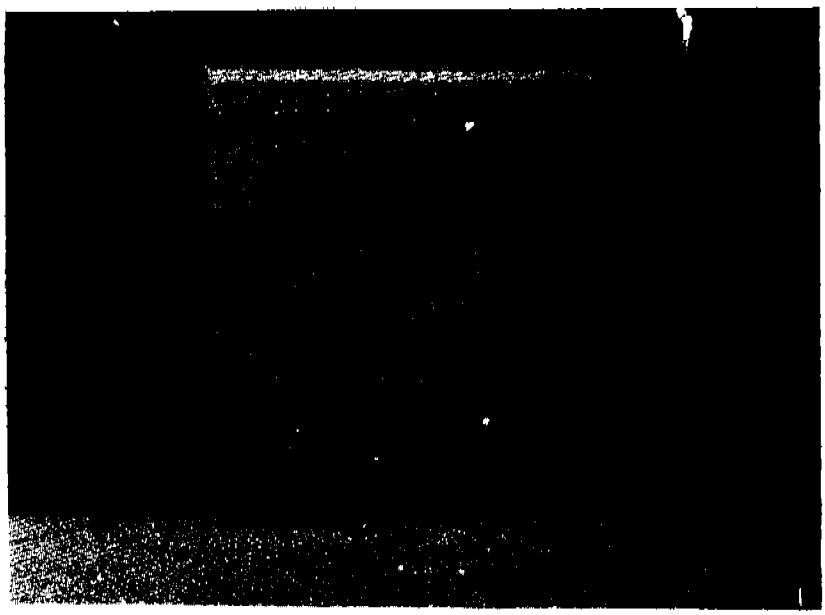
पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 3rd August, 1999

S. O. 2288.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the model of non-automatic, weighing instrument (Conversion kit for weighbridge) with digital indication (hereinafter referred to as the model) of 'KPC 1000' series belonging to medium accuracy class (Accuracy class III) and with brand name 'KOMAL', manufactured by M/s. Komal Process Controls, A32, Manish Complex, 10, Convent Road, Bangalore-560025 and which is assigned the approval mark IND/09/99/32;

The model is a non-automatic weighing instrument with digital indication of maximum capacity 30 tonnes and minimum capacity of 100 kg and belonging to medium accuracy class (accuracy class III). The value of verification scale interval (e) is 5 kg. The display unit is of Light Emitting Diode (LED) type. The instrument operates on 220 V, 50 Hertz alternate current power supply;



And further, in exercise of the powers conferred by sub-section (12) of section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the model shall also cover the weighing instruments of same make and accuracy class with maximum capacity in the range of 5 tonnes to 100 tonnes and with maximum number of scale interval (n) upto 10,000 ($n \leq 10,000$) and with 'e' value of 1×10^k, 2×10^k and 5×10^k being a positive or negative whole number or equal to zero, manufactured by the same manufacturer with the same design and with the same materials with which the approved Model has been manufactured.

[F. No. WM-21 (125)/97]

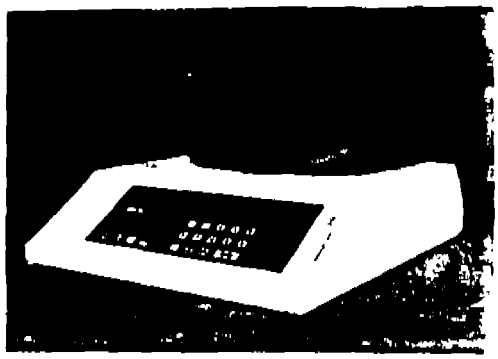
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 3 अगस्त,1999

का. आ. 2289.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात्, यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उच्च यथार्थता (यथार्थता वर्ग II) वाली "डब्ल्यू टी/सी 2" शृंखला की अंकक प्रदर्शन सहित, अस्वचालित मेजतल तोलन उपकरण (मेजतल) के माडल का, जिसके ब्रांड का नाम "सीको" है और जिसका विनिर्माण मैसर्स शिंदे स्केल कंपनी, 710, शुक्रवार पेठ, पुणे-411002 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/99/03 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

यह माडल उच्च यथार्थता (यथार्थता वर्ग II) का अंकक प्रदर्शन सहित अस्वचालित तोलन उपकरण है, जिसकी अधिकतम क्षमता 10 किलो ग्राम और न्यूनतम क्षमता 50 ग्राम है। सत्यापन मापमान अन्तराल (ई) 1 ग्राम है। प्रदर्श इकाई प्रकाश उत्सर्जन डायोड प्रकार की है। उपकरण 220 वोल्ट और 50 हर्टज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा(12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि माडल के इस अनुमोदन प्रमाण-पत्र के अन्तर्गत, उसी शृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माण किया गया है और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 1,00,000 (एन ≤ 1,00,000) से कम या उसके बराबर है तथा जिसका "ई" मान 1×10 के. 2×10 के. और 5×10 के है, के धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य है।

[फा. सं. डब्ल्यू० एम०-21(128)/97]

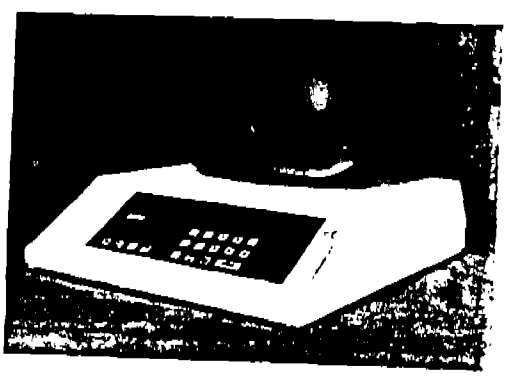
पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 3rd August, 1999

S. O. 2289.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the model of non-automatic, weighing instrument (Table top type) with digital indication (hereinafter referred to as the model) of "WT/C2" series belonging to high accuracy class (Accuracy class II) and with brand name 'SECO', manufactured by M/s. Shinde Scale Company, 710, Shukrawar Peth, Pune-411002 and which is assigned the approval mark IND/09/99/03;

The model is a non-automatic weighing instrument of table top type with digital indication of maximum capacity 10 kg and minimum capacity of 50 g and belonging to high accuracy class (accuracy class II). The value of verification scale interval (e) is 1 g. The display unit is of Light Emitting Diode type. The instrument operates on 220 V, 50 Hertz alternate current power supply;



Further, in exercise of the powers conferred by sub-section (12) of section 36 , the Central Government hereby declares that this certificate of approval of the model shall also cover the weighing instruments of same make and accuracy class with maximum number of scale interval (n) upto 1,00,000 ($n \leq 1,00,000$) and with 'e' value of 1×10^k, 2×10^k and 5×10^k being a positive or negative whole number or equal to zero, manufactured by the same manufacturer with the same design and with the same materials with which the approved model has been manufactured.

[F. No. WM 21 (128)/97]

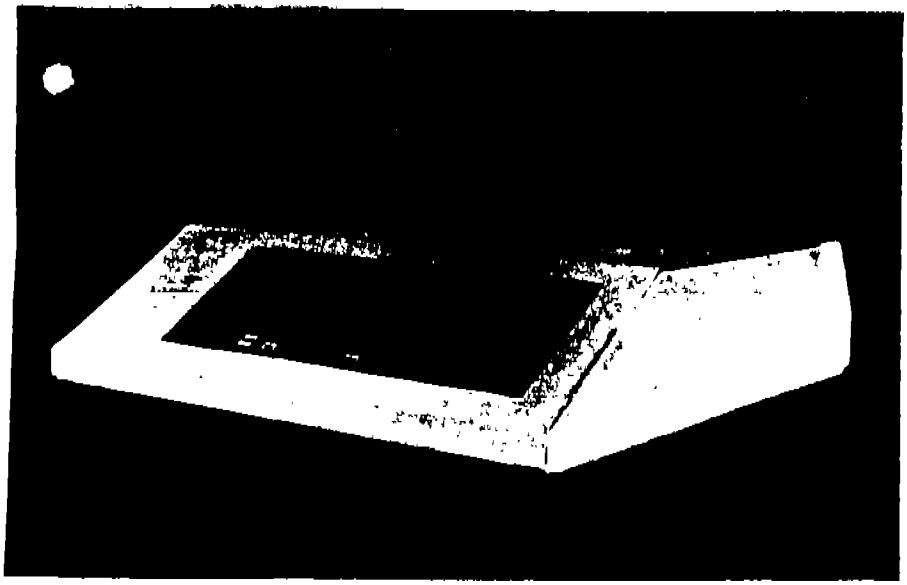
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 3 अगस्त, 1999

का. आ. 2290.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात्, यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उच्च यथार्थता (यथार्थता वर्ग II) वाली "डब्ल्यू पी/सी 2" शृंखला की, अंकक प्रदर्शन सहित अस्वचालित मेजतल तोलन उपकरण (प्लेटफार्म) के माडल का, जिसके ब्रांड का नाम "सीको" है और जिसका विनिर्माण मैसर्स शिंदे स्केल कंपनी, 710, शुक्रवार पेठ, पुणे-411002 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/99/04 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

यह माडल उच्च यथार्थता (यथार्थता वर्ग II) का अंकक प्रदर्शन सहित अस्वचालित तोलन उपकरण है, जिसकी अधिकतम क्षमता 100 किलो ग्राम और न्यूनतम क्षमता 500 ग्राम है। सत्यापन मापमान अन्तराल (ई) 10 ग्राम है। प्रदर्श इकाई प्रकाश उत्सर्जक डायोड प्रकार की है। उपकरण 220 वोल्ट और 50 हर्टज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि माडल के इस अनुमोदन प्रमाण-पत्र के अन्तर्गत, उसी शृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माण किया गया है और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 1,00,000 (एन $\leq$ 1,00,000) से कम या उसके बराबर है तथा जिसका "ई" मान 1×10 के, 2×10 के और 5×10 के है, के धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य है

[फा. सं. डब्ल्यू० एम०-21/(128)/97]

पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

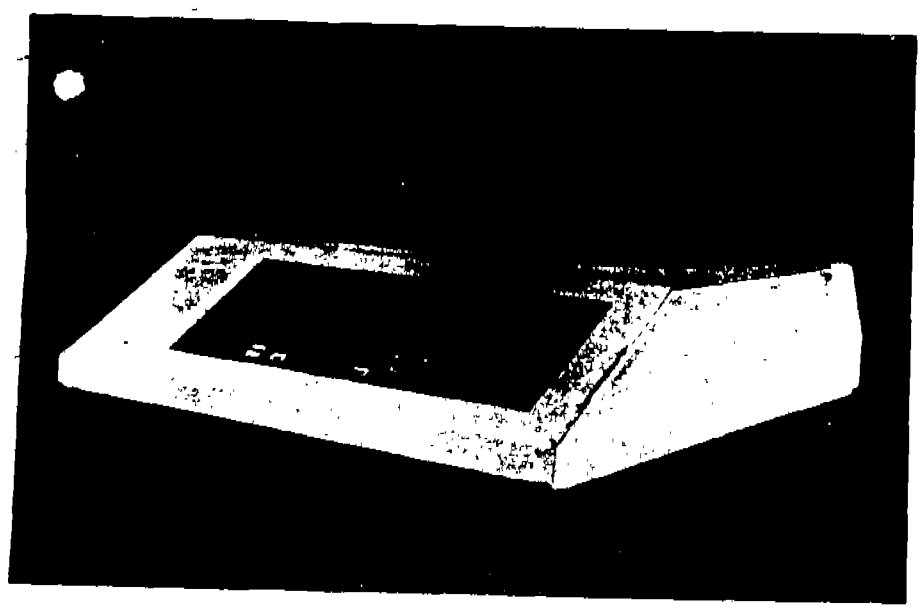
2273 GI/99-5

New Delhi, the 3rd August, 1999

S. O. 2290.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976), and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of model of non automatic weighing instrument (Platform type) with digital indication (hereinafter referred to as the model) of "WP/C2" series belonging to high accuracy class (Accuracy class II) and with brand name 'SECO', manufactured by M/s. Shinde Scale Company, 710, Shukrawar Peth, Pune-411002 and which is assigned the approval mark IND/09/99/04.

The model is a non-automatic weighing instruments of platform type with digital indication of maximum capacity 100 kg, minimum capacity of 500 g and belonging to high accuracy class (accuracy class II). The value of verification scale interval (e) is 10 g. The display unit is of light emitting diode type The instrument operates on 220 V, 50 Hertz alternate current power supply;



Further, in exercise of the powers conferred by sub-section (12) of section 36, the Central Government hereby declares that this certificate of approval of the model shall also cover weighing instruments of same make and accuracy class with maximum number of scale interval (n) upto 1,00,000 ($n \leq 1,00,000$) and with 'e' value of $1 \times 10k$, $2 \times 10k$ and $5 \times 10k$, k being a positive or negative whole number or equal to zero, manufactured by the same manufacturer with the same design and with the same materials with which the approved model has been manufactured.

[F. No. WM 21 (128)/97]

P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 3 अगस्त,1999

का. आ. 2291.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात्, यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मध्यम यथार्थता (यथार्थता वर्ग III) वाली "डब्ल्यू टी/सी 3" श्रृंखला की, अंकक प्रदर्शन सहित अस्वचालित मेजतल तोलन उपकरण (मेजतल) के माडल का, जिसके ब्रांड का नाम "सीको" है और जिसका विनिर्माण मैसर्स शिंदे स्केल कंपनी, 710, शुक्रवार पेठ, पुणे-411002 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/99/05 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

यह माडल मध्यम यथार्थता (यथार्थता वर्ग III) का अंकक प्रदर्शन सहित अस्वचालित तोलन उपकरण (मेजतल) है, जिसकी अधिकतम क्षमता 25 किलो ग्राम और न्यूनतम क्षमता 100 ग्राम है। सत्यापन मापमान अन्तराल (ई) 5 ग्राम है। प्रदर्श इकाई प्रकाश उत्सर्जन डायोड प्रकार की है। उपकरण 220 वोल्ट और 50 हर्टज आवृत्ति की प्रत्यवर्ती धारा विद्युत प्रदाय पर कार्य करता है।

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि माडल के इस अनुमोदन प्रमाण-पत्र के अन्तर्गत, उसी श्रृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माण किया गया है, और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 10,000 (एन ≤ 10,000) से कम या उसके बराबर है तथा जिसका "ई" मान 1×10 के, 2×10 के और 5×10 के है, के धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य है।

[फा. सं. डब्ल्यू० एम०-21/(128)/97]

पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 3rd August, 1999

S. O. 2291.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976), and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of model of non-automatic weighing instrument (table top type) with digital indication (hereinafter referred to as the model) of "WT/C3" series belonging to medium accuracy class (accuracy class III) and with brand name 'SECO', manufactured by M/s. Shinde scale Company, 710, Shukrawar Peth, Pune-411002 and which is assigned the approval mark IND/09/99/05;

The model is a non-automatic weighing instruments of table top type with digital indication of maximum capacity 25 kg minimum capacity of 100 g and belonging to medium accuracy class (accuracy class III). The value of verification scale interval (e) is 5 g. The display unit is of light emitting diode type. The instrument operates on 220 V, 50 Hertz alternate current power supply;

Further, in exercise of the powers conferred by sub-section (12) of the section 36, the Central Government hereby declares that this certificate of approval of the model shall also cover weighing instruments of same make and accuracy class with maximum number of scale interval (n) upto 10,000 ($n \leq 10,000$) and with 'e' value of $1 \times 10k$, $2 \times 10k$ and $5 \times 10k$, k being a positive or negative whole number or equal to zero, manufactured by the same manufacturer with the same design and with the same materials with which the approved model has been manufactured.

[F. No. WM 21 (128)/97]

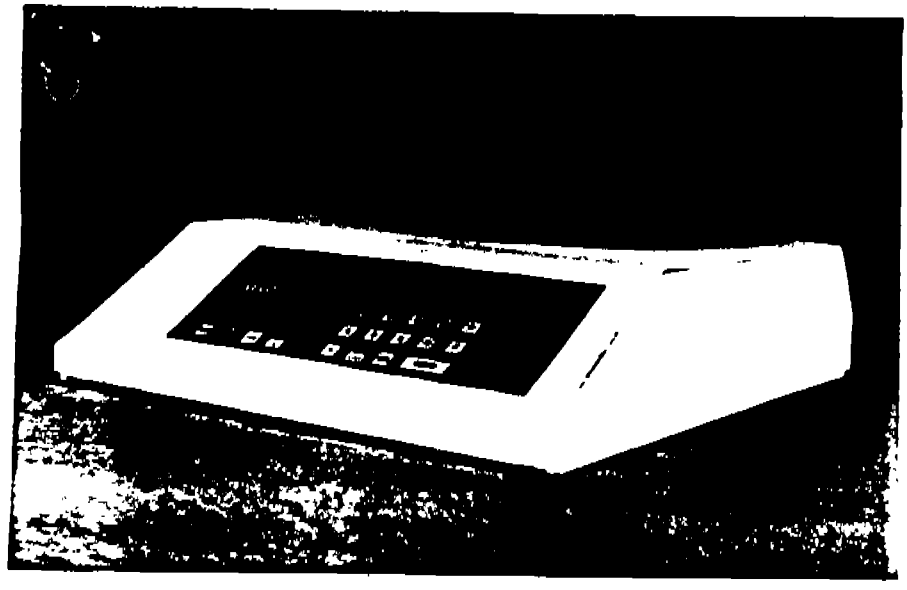
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 3 अगस्त, 1999

का. आ. 2292.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात्, यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मध्यम यथार्थता (यथार्थता वर्ग III) वाली "डब्ल्यू पी/सी 3" शृंखला की, अंकक प्रदर्शन सहित अस्वचालित मेजतल तोलन उपकरण (प्लेटफार्म) तोलन मशीन के मॉडल का, जिसके ब्रांड का नाम "सीको" है जिसे इसमें पश्चात् मॉडल कहा गया है और जिसका विनिर्माण मैसर्स शिंदे स्केल कंपनी, 710, शुक्रवार पेठ, पुणे-411002 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/99/06 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

यह मॉडल मध्यम यथार्थता (यथार्थता वर्ग III) का अंकक प्रदर्शन सहित अस्वचालित तोलन उपकरण (प्लेटफार्म) है, जिसकी अधिकतम क्षमता 250 किलोग्राम और न्यूनतम क्षमता 1 किलोग्राम है। सत्यापन मापमान अन्तराल (ई) 50 ग्राम है। प्रदर्श इकाई प्रकाश उत्सर्जन डायोड प्रकार की है। उपकरण 220 वोल्ट और 50 हर्टज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि मॉडल के इस अनुमोदन प्रमाण-पत्र के अन्तर्गत, उसी शृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित मॉडल का विनिर्माण किया गया है और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 10,000 (एन $\leq$ 10,000) से कम या उसके बराबर है तथा जिसका "ई" मान 1×10 के, 2×10 के, और 5×10 के है, के धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य है।

[फा. सं. डब्ल्यू० एम०-21/(128)/97]

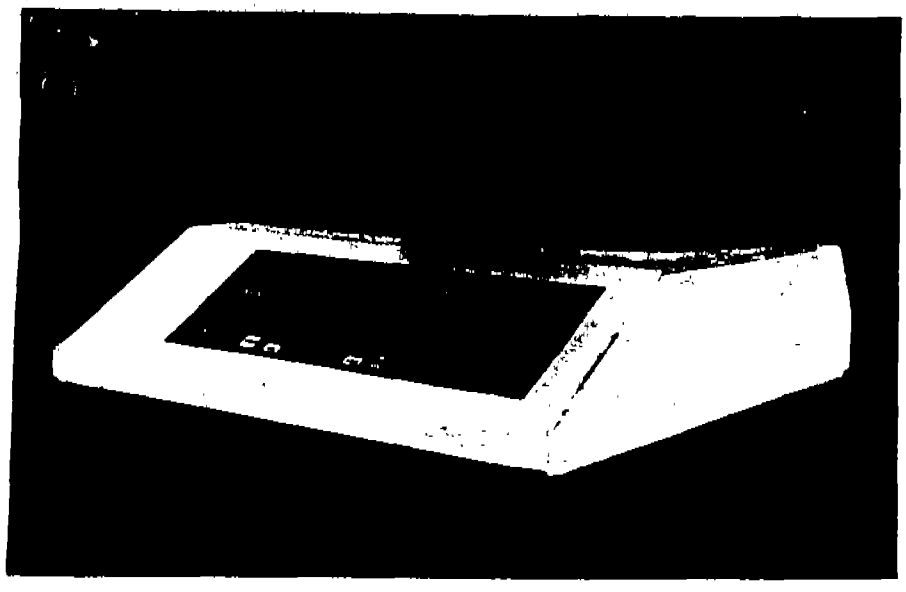
पी. ए. कृष्णामूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 3rd August, 1999

S. O. 2292.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the model of non-automatic, weighing instrument (platform type) with digital indication (hereinafter referred to as the model) of "WP/C3" series belonging to medium accuracy class (accuracy class III) and with brand name 'SECO', manufactured by M/s Shinde Scale Company, 710, Shukrawar Peth, Pune-411002 and which is assigned the approval mark IND/09/99/06;

The model is a non-automatic weighing instruments of platform type with digital indication of maximum capacity 250 kg and minimum capacity of 1 kg and belonging to medium accuracy class (accuracy class III). The value of verification scale interval (e) is 50 g. The display unit is of light emitting diode type. The instrument operates on 220 V, 50 Hertz alternate current power supply;



Further, in exercise of the powers conferred by sub-section (12) of the section 36, the Central Government hereby declares that this certificate of approval of the model shall also cover weighing instruments of same make and accuracy class with maximum number of scale interval (n) upto 10,000 ($n \leq 10,000$) and with 'e' value of $1 \times 10k$, $2 \times 10k$ and $5 \times 10k$, k being a positive or negative whole number or equal to zero, manufactured by the same manufacturer with the same design and with the same materials with which the approved model has been manufactured.

[F. No. WM 21 (128)/97]

P. A. KRISHNAMOORTHY, Director, Legal Metrology

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 5 अगस्त 1999

का. आ. 2293.— केन्द्रीय सरकार ने, पेट्रोलियम और खनिज पाइप-लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962(1962 का 50) (जिसे इसमें इसकेपश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 1830, तारीख 25 जून, 1999 द्वारा पेट्रोलियम उत्पाद के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजनार्थ उक्त अधिसूचना से संलग्न अनुसूची में बिनिर्दिष्ट भूमि में उपयोग के अधिकारों के अर्जन के अपने आशय की घोषणा की थी;

और, उक्त राजपत्रित अधिसूचना की प्रतियां जनता को तारीख 26 जून 1999 से उपलब्ध करा दी गई थीं;

और उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में बिनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना चाहिए ;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना से संलग्न अनुसूची में बिनिर्दिष्ट भूमि में उपयोग के अधिकार अर्जित करने की घोषणा करती है;

यह और कि केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार, केन्द्रीय सरकार में निहित होने की बजाए सभी विल्लंगमों से रहित भारत ओमान रिफाईनरीज़ लिमिटेड में निहित होगा।

अनुसूची

राज्य: गुजरात

जिला का नाम	तालुका का नाम	गांव का नाम	सर्वेक्षण सं./ खंड सं.	क्षेत्र		
				हेक्टर	आरे	सेन्टीआरे
(1)	(2)	(3)	(4)	(5)	(6)	(7)
पंचमहाल	मोरवा (ह्डफ)	सालीया	400/3	0	19	67
दाहोद	बारीया	असायडी	128/1	0	30	30
दाहोद	दाहोद	भुतोडी	98	0	52	45

[आर-31015/26/96-ओ.आर.-II]

एस. चन्द्रशेखर, अवर सचिव

Ministry of Petroleum and Natural Gas

New Delhi, the 5th August, 1999

S. O. 2293.— Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S. O. 1830 dated the 25th day of June, 1999, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Aquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the lands specified in the Schedule appended to that notification for the purpose of laying pipeline for the transport of petroleum;

And, whereas, the copies of the said gazette notification were made available to the public from the 26th day of June, 1999;

And, whereas, the competent authority in pursuance of sub-section (1) of section 6 of the said Act has made his report to the Central Government;

And, whereas, the Central Government after considering the said report is satisfied that the right of user in the lands specified in the Schedule appended to this notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification are hereby acquired;

And further in exercise of the powers conferred by sub-section (4) of section 6 of that Act, the Central Government hereby directs that the right of user in the said lands shall instead of vesting in the Central Government, vest, free from all encumbrances, in the Bharat Oman Refinaries Limited:

Schedule

State : Gujarat

Name of District	Name of Taluka	Name of Village	Survey No./ Block No.	Area		
				Hectare	Are	Centare
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Panchmahal	Morva (Hadaf)	Saliya	400/3	0	19	67
Dahod	Bariya	Asayadi	128/1	0	30	30
Dahod	Dahod	Bhutodi	98	0	52	45

[R-31015/26/96-OR-II]

S. CHANDRASEKHAR, Under Secy.

नई दिल्ली, 6 अगस्त, 1999

का. आ. 2294.— केन्द्रीय सरकार पट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में भारत सरकार के पट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं0 का0आ0 529 तारीख 11 फरवरी, 1999 को अधिक्रांत करते हुए सिवाय उन बातों के जो ऐसे अधिक्रमण से पूर्व की गई हैं, या जिन्हें करने का लोप किया गया है, गुजरात सरकार के विशेष भूमि अर्जन अधिकारी श्री के0एस0नायक को गुजरात स्टेट पट्रोलियम कार्पोरेशन लिमिटेड (जी.एस.पी.सी.एल) द्वारा गुजरात राज्य के जिला सूरत और भरूच में स्थित गैस संग्रहण /अनुकूलन केन्द्र हजीरा से मोरा-भरूच-दाहेज तक पाइपलाइन बिछाने के लिए जिला सूरत और जिला भरूच के क्षेत्र में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए नियुक्त करती है ;

और उक्त श्री के0एस0नायक की सेवाएं गुजरात राज्य सरकार के अधीन खाद्य और मागरिक आपूर्ति विभाग को सौंप दी गई हैं ;

और उक्त श्री के0एस0नायक की मैसर्स गुजरात स्टेट पट्रोलियम कार्पोरेशन लिमिटेड के साथ प्रतिनियुक्ति 30 जून, 1999 से समाप्त हो गई है ;

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 2 के खंड (क) के अनुसरण में, नीचे दी गई अनुसूची के स्तंभ (1) में वर्णित व्यक्ति को, उक्त मैसर्स गुजरात स्टेट पट्रोलियम कार्पोरेशन लिमिटेड द्वारा गुजरात राज्य के जिला सूरत और भरूच में स्थित गैस संग्रहण /अनुकूलन केन्द्र हजीरा से मोरा-भरूच-दाहेज तक पाइपलाइन बिछाने के लिए जिला सूरत और जिला भरूच के उक्त अनुसूची के स्तंभ (2) में वर्णित क्षेत्रों में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए नियुक्त करती है ।

अनुसूची

व्यक्ति का नाम और पता	अधिकारिता क्षेत्र
श्री एन.एच.नानावटी, गुजरात सरकार के मामलादार जो गुजरात स्टेट पट्रोलियम कार्पोरेशन लिमिटेड में प्रतिनियुक्ति पर ब्लॉक नं0 15, दूसरा तल, उद्योग भवन, सेक्टर नं0 11, गांधीनगर - 382011	गुजरात राज्य के सूरत और भरूच जिले

[एल-14014/7/98-जी.पी.]
सुनील कुमार सिंह, अवर सचिव

New Delhi, the 6th August, 1999

S. O. 2294.— Whereas, in pursuance of clause (a) of section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government vide Notification of Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 529 dated February 11, 1999 appointed Shri K.S. Naik, Special Land Acquisition Officer, Government of Gujarat to perform the functions of the competent authority under the said Act for laying of the pipeline by M/s Gujarat Petroleum Corporation Limited (GSPCL) from Gas Gathering/Conditioning Station at Hazira to Mora-Bharuch-Dahej in the Districts of Surat and Bharuch in Gujarat State, in respect of the area of Districts of Surat and Bharuch in Gujarat State;

And, whereas, the services of the said Shri K.S. Naik have been placed at the disposal of Food and Civil Supplies Department under the State Government of Gujarat;

And, whereas, the deputation of the said Shri K.S. Naik with M/s Gujarat State Petroleum Corporation Limited has come to an end with effect from June 30, 1999;

Now, therefore, in pursuance of clause (a) of section (2) of the said Act and in supersession of S.O. 529 dated February 11, 1999, the Central Government hereby authorises the person mentioned in column (1) of the schedule given below to perform the functions of the competent authority under the said Act for laying pipelines by the said M/s Gujarat State Petroleum Corporation Limited from Gas Gathering/Conditioning Station at Hazira to Mora-Bharauch-Dahej in the Districts of Surat and Bharauch in Gujarat State in the area mentioned in column (2) of the said schedule.

SCHEDULE

Name of the person and address	Area of jurisdiction
Shri N.H. Nanavati, Mamlatdar, Government of Gujarat on deputation to Gujarat State Petroleum Corporation Ltd., Block No.15, 2nd Floor, Udyog Bhavan, Sector No. 11, Gandhinagar-382011.	Districts of Surat and Bharauch in the State of Gujarat.

[L-14014/7/98-GP]
S. K. SINGH, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 14 जुलाई, 1999

का.आ. 2295.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-7-99 को प्राप्त हुआ था।

[सं. एल.-43012/23/88-डी.-III(बी.)]
बी.एम. डेविड, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 14th July, 1999

S.O. 2295.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Ltd., and their workman, which was received by the Central Government on 14-7-99.

[No. L-43012/23/88-D-III(B)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, BANGALORE

DATED 7TH JULY, 1999

PRESENT:

JUSTICE R. RAMAKRISHNA,
PRESIDING OFFICER.

C.R. No. 23/1989

I PARTY	II PARTY
Sri Mohanraj, Door No. 914, Champion Reef, K.G.F. 563 120.	The Managing Director, Bharath Gold Mines Ltd., Oorgaum P.O., K.G.F.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/23/88-D.III(B) dt. 21-2-1989 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of B.G.M.L., K.G.F. in dismissing Sri Mohanraj, General Labour, from service w.e.f. 20-5-1983 is justified. If not, to what relief he is entitled?"

2. This workman joined the services in the year 1968 as a general labourer (underground).

3. On 4-9-82, after 10-30 PM, this workman was searched by the Searching Party at Watch and Ward gate when he was going out along with other workmen of the same shift. He was found carrying Gold Bearing Quartz concentrated powder below his tongue. Later, it was also found that he has swallowed specks of gold which was discovered when an X-ray was taken.

4. The allegation of charge in brief is as follows:

"That the I party Workman on 4-9-88 at about 10.30 PM at Gifford Searching Yard in the mines the I Party workman, who had indulged in theft, was found in un-authorised possession of visible GBQ concentrated powder. He was carrying this under his tongue. This was noticed by S. D. Watchman 307 Bachiyntar Singh when the I Party workman was searched. The I Party workman refused to open his mouth and lift his tongue as directed by the watchman. During the search, the I Party bit the left thumb of the Havaldar Birbal when the Havaldar caught hold the mouth of the I Party workman. The I Party workman attempted to escape from the grips of watch and ward personnel and fell down on the ground and spat the bundle from his mouth into his left palm. The I party workman with the GBQ concentrated powder in his left thumb was caught by the Havaldar. The I Party workman bit the right thumb of S. D. watchman when the watchman was trying to hold the I Party workman's mouth. The I Party workman's stomach was found to contain some foreign body on screening and after X-ray at BGML Hospital. After sedimentation of his night soil it was found to contain sparkling specks of gold."

5. Since the above acts amount to committing theft of employer's property which is a mis-conduct under Standing Order No. 15(B), a domestic enquiry was initiated. The Enquiry Officer after recording the evidence of management witnesses also recorded the evidence of Defence and thereafter concluded that this workman has committed the offence of theft. The management accepted the report and after giving an opportunity for this workman to have a say with regard to the proposed punishment has ultimately passed an Order of dismissal.

6. The workman raised an Industrial dispute and the reference was received by this Tribunal during February 1989.

7. The I Party in his claim statement has initially questioned the validity of domestic enquiry. He has also raised a defence of false implication due to his trade union activities.

8. Lastly, he has contended that the punishment of dismissal is shockingly dis-proportionate to the gravity of misconduct and therefore this is a fit case to invoke the jurisdiction under Sec. 11A of the Industrial Disputes Act.

9. The management in their counter statement have supported the mode of domestic enquiry and further contended that committing theft is a very serious offence and therefore the Order of dismissal does not call for any interference.

10. Initially, we have framed a preliminary issue to give a finding on the domestic enquiry. My Predecessor on appreciation of both oral and documentary evidence on this issue, passed an Order on 31-3-93 against the management. In accordance with Law, the management was permitted to adduce independent evidence to prove the misconduct independently before this Tribunal.

11. Due to long lapse of time in almost all the stage of the case including the reference, the management was able to examine only one witness to prove the mis-conduct after the domestic enquiry was set aside. The Advocate for the II Party prayed for adjournment to examine some more witnesses, but, this Tribunal refused to grant adjournment as the alleged offence is of the year 1982 and this workman was dismissed from service during middle of 1983.

12. The witness examined by the II Party on merit is one Sri Bachatar Singh who was one of the witness in the domestic enquiry and was present from the time this workman was caught by the Watch and Ward group till the conclusion of the investigation.

13. This witness has given the evidence covering all the aspects of this case including the officials involved in the investigation of this case including the recovery of gold by the Hospital authorities after screening his stomach.

14. The cross-examination made to this witness seems to be a formal one as it does not aim to dispute the offence of this witness given in the examination-in-chief.

15. As I said earlier, due to long lapse of time, the documents will dis-appear, the witnesses will reach the age of forgetfulness and some witnesses are not available due to their death.

16. It is true that the management was not able to examine all the witnesses who are involved in this investigation mainly due to the fact that this long lapse of time has tend to result in the retirement and death of the witnesses. Therefore, there is no impediment to accept the evidence of a sole witness, if the same satisfies the Principles laid down in the Evidence Act. This witness gave a detailed version of the events which were not seriously challenged by the learned advocate for the I Party.

17. There is no material produced by the I Party that though he has been dismissed in the year 1983, how the reference came to be referred to this Tribunal in the year 1989. There is 6 years delay in making reference which is also one of the factors to appreciate that the I Party has lost his right to question the Order of dismissal.

18. Having regard to these facts and circumstances, the II Party are justified in dismissing this workman on the proved mis-conduct of theft.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 14 जुलाई, 1999

का.आ. 2296:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-7-99 को प्राप्त हुआ था।

[सं. एल.-43015/1/91-आई.आर. (विविध)]
बी.एम. डेविड, डैस्क अधिकारी

New Delhi, the 14th July, 1999

S.O. 2296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Ltd., and their workman, which was received by the Central Government on 14-7-1999.

[No. L-43015/1/91-IR (Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, BANGALORE

DATED : 6-7-1999

PRESENT :

JUSTICE R. RAMAKRISHNA,
PRESIDING OFFICER.

C.R. No. 19/1991

I PARTY	II PARTY
Shri Thomas David C/o Indian Employees Union 502/40, 5th cross, III Block, Rajajinagar, Bangalore-560 010.	The General Manager Agent, Oorgaum P.O. Kolar Gold Field- 563 120, Karnataka- 563 114.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43015/1/91-IR (Misc.) dated 27-3-1991/5-4-1991 on the following schedule :

SCHEDULE

"Whether the management of B.G.M.L., represented by its General Manager/Agent, Oorgaum PO, KGF, Bangarpet Taluk, Kolar District, Karnataka is justified in dismissing Sri Thomas David, General Labourer, P.E. No. 159429, Mysore Mine, from the services w.e.f. 29-1-1982 ? If not, to what relief(s) the said workman is entitled ?"

2. The first party workman was appointed as a General labourer on 7-4-1981. His appointment was on compassionate grounds, as his father Muthuswamy retired from service due to his eye trouble under medically unfit certificate.

3. Immediately after short period the management detected that he has given false particulars to secure the job, have issued an articles of charges Ex-M-1. The first party was asked to show cause why the action should not be taken for fraud and dishonesty. He has declared that none of his family members are employed in BGML although one of his brother Sri Charles Sounderraj, T. No. 194/156056 was working in Electrical Section from 20-10-1980.

4. The workman gave his reply denying the allegation of fraud and dishonesty, though he has not denied the fact that one of his brother is employed as alleged in the charge sheet. The second party conducted a domestic enquiry on this allegation. The report of the enquiry officer was accepted, which was against the workman, and he was dismissed from services. The workman raised an Industrial Dispute and necessary reference is made.

5. The parties have filed their respective statements after this dispute is registered in this tribunal. Since the order of dismissal is based on the result of the domestic enquiry, we have framed a preliminary issue to give a finding on the validity of domestic enquiry. My predecessor in office after recording the evidence of this preliminary issue gave a finding on 8-11-1993 in favour of the management. Though this order is of the year 1993 this case has seen the light of the day only during March 1999.

6. Shri N. G. Phadke the Learned Advocate has submitted that the order of the enquiry officer is perverse and acceptance of such order to pass an order of dismissal is legally unsustainable. The main contention of Mr Phadke is that the enquiry officer failed to accept the contention of the first party that his brother Charles Sounder Raj was left their house long back, he was not knowing his where abouts and therefore he has not committed any misconduct in declaring that no other family member of Muthuswamy are working at B.G.M.L.

7. There is sufficient force in the submission of the Learned Advocate. Initially the second party shall establish that the brother of the first party was either independently appointed or on compassionate ground. If any member of the family living separately on his own without making any assistance to the family from which he is separated then he cannot be called as a member of that family. If that is so he is not entitled to claim a benefit to secure the employment on compassionate ground.

8. The very work compassionate is to be understood with liberal trends. If a person is appointed on compassionate ground the meaning is that the said person was dependent to the person who has been retired from service or met with death during the subsistance or service. Therefore it was necessary for the enquiry officer to appreciate the situation in the above circumstances.

9. Shri NGP also made available a xerox copy of a declaration made by Chief Engineer Electrical dated 26-6-89. According to this letter the said Charles Sounder Raj was retired under voluntary retirement scheme w.e.f. 28-11-91. In this certificate the father of the said charles was shown as

W. William. This fact was spoken to by the first party in his evidence recorded before this tribunal.

10. Having regard to these facts and circumstances the second party were not justified in dismissing the services of first party workman.

11. Admittedly the order of dismissal was in the month of January 1982. A period of 17 years is already elapsed. But however it is contended by the learned Advocate for the first party that this workman is fighting this litigation ever since the order of dismissal and therefore he is ready to give up the back wages if he is re-instated to the position he was held at the time of this dismissal.

In view of these circumstances the following order is made :

ORDER

The order of dismissal dated 29-01-1982 made by the second party is hereby set aside.

The second party are directed to re instate the first party workman to the position he was held at the time of dismissal. There should be continuity of service. He is not entitled for any back wages.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 21 जुलाई, 1999

का.आ. 2297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल वेयर हाउसिंग कार्पोरेशन के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-99 को प्राप्त हुआ था।

[सं. एल-42012/176/86-डी.-II (बी.)]
बी.एम. डेविड, डैस्क अधिकारी

New Delhi, the 21st July, 1999

S.O. 2297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Warehousing Corporation and their workman, which was received by the Central Government on 21st July, 1999.

[No. L-42012/176/86-D-II(B)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Presiding Officer Shri D. N. Dixit

Case No. CGIT/LC/R/148/87

Regional Manager,
Central Warehousing Corporation,
52/53, Amar Niwas, New Market,
TT Nagar, Bhopal (MP). ...Management.

Vs.

Gorelal, S/o Khusi Lal,
Near Sanchi Stoop, Sanchi,
Dist. Raisen (MP). ...Workman.

AWARD

Passed on this 26th day of May, 1999.

1. Ministry of Labour, Government of India by order No. L-42012/176/86-D. II(B) dated 26th August, 1987 has referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of Central Warehousing Corporation, Regional Office, Bhopal in terminating Shri Gorelal, Ex-Watchman from service w.e.f. 25th June, 1986 is legal and justified ? If not, to what relief is the workman concerned entitled ?"

2. The case of the workman is that he was appointed as a Watchman at Raipur from 25th August, 1984. The services of the workman was terminated from 25th June, 1986. The reasons for termination are not stated in the order. Prior to termination enquiry was not held against the workman. The workman has not been paid retrenchment compensation, or in lieu of notice. The termination of workman is bad in law. The workman prays that order dated 25th June, 1986 be quashed and it be declared that he is still in service. The workman claims that he is still in service. The workman claims wages and allowances from 25th June, 1986 up to date.

3. The case of the management is that the workman was appointed as a watchman on probation of one year. This period of probation was further extended by one year. The performance of the workman was found unsatisfactory. Hence his services were terminated during the period of probation. The workman has been paid one month's salary. There was no need to give retrenchment compensation and notice of termination. The case of the workman is false and frivolous. Management prays that the termination of the workman is just and proper and prays for Award in their favour.

4. The appointment order dated 28th April, 1984 of the workman includes the terms and conditions of the services which will be governed by the Central Warehousing Corporation (Staff Regulations) as in force from time to time. Clause 10 of the Central Warehousing Corporation (Staff Regulations 1986) is in respect of probation which is reproduced below :—

"Every person regularly appointed to any post either by direct recruitment or by promotion shall be on probation for a minimum period of one year from the date of assumption of charge.

(ii) The appointing Authority may, in its decision extend the period of probation up to a further period not exceeding one year.

(iii) During the period of probation, an employee directly recruited shall be liable to be discharged from the service without assigning

any reason by giving him a notice of one month or pay in lieu thereof. A departmental candidate appointed to any higher post through direct recruitment shall during the period of probation be liable to be reverted to the original post held by him prior to such appointment. Without any notice and without assigning any reason.

(iv) During the period of probation, an employee promoted to a higher post from a lower post shall be liable to be reverted to the lower post without notice and without assigning any reason.

(v) Where an employee has rendered continuous temporary or officiating or adhoc service or continuous service in the post of deputation immediately proceeding his regular appointment to such post, the period of service so rendered may be counted against the period of probation. If the Appointing Authority so directs. This will, however, not affect the seniority which will be governed by the normal rules of seniority in the grade."

5. The above clause in the regulation gives a right to the management at its discretion to extend the period of probation for further period of one year. The management also has got the right to discharge the probation or from service without assigning any reason by giving him notice of one month or pay in lieu of.

6. The workman has stated in his affidavit that he was appointed as a watchman on probation of one year vide Exhibit M-1. He has further admitted that his period of probation was extended for one more year. Thus during the period of probation the services of workman were terminated. The services of workman were terminated under Clause-10 (iii) of the Central Warehousing Corpn. (Staff Regulations) 1986.

7. The performance of the workman was not satisfactory. Workman was given ample opportunity to improve himself. Several sortcomings were found in his performance which were communicated to him from time to time. The memo Exhibit-M-3 was given to workman and the workman has not replied to it. Another memo Exhibit-M-5 has been given to the workman. Again the workman has not replied. The report to Regional Manager was made against the workman which is Exhibit-M-11. In Exhibit-M-12, the special officer has found the honesty and integrity of the workman doubtful. In Exhibit M-13, it has been recorded that workman does not observe discipline. In Exhibit-M-15, the performance report during probation, there are adverse remarks against the workman.

8. It is thus clear that the management gave ample opportunity to workman to improve himself. When workman showed no improvement then only his services were terminated.

9. The action of the management in terminating the services of the workman during probation on unsatisfactory services is legal and proper.

10. There was no need to give notice of termination and retrenchment compensation to the workman.

11. The Award is given in favour of the management and against the workman. Parties to bear their own costs.

12. Copy of the award be sent to Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 21 जुलाई, 1999

का.आ. 2298.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै० शिपिंग क्रेडीट एण्ड इन्वेस्टमेन्ट कं. इंडिया लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं.-I मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-99 को प्राप्त हुआ था।

[सं. एल.-42012/4/92-आई.आर. (विविध)]
बी.एम. डेविड, डैस्क अधिकारी

New Delhi, the 21st July, 1999

S.O. 2298.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No.-I, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M|s. Shipping Credit & Investment Co. India, Ltd., and their workman, which was received by the Central Government on 21-7-99.

[No. L-42012|4|92-IR(Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT:

Shri Justice C. V. Govardhan, Presiding Officer.

Reference No. CGIT-35 of 1993

PARTIES:

Employers in relation to the management of M|s. Shipping Credit & Investment Co. India Ltd.

AND

Their workmen

APPEARANCES:

For the Management—Shri Jalota, Advocate.

For the Workman—Shri M. B. Anchan, Advocate.

STATE : Maharashtra,

Mumbai, dated the 9th day of July, 1999

AWARD

1. The Central Govt. by its order dt. 20th July 1993 has referred the following dispute between the management of M|s. Shipping Credit & Investment Co. India Ltd., and their workman for adjudication by his Tribunal.

"Whether the action of the management of M|s. Shipping Credit & Investment Corporation India Ltd. in terminating the services of Shri T. R. Shetty an ex-employee w.e.f. 31-1-1990 without complying the provisions of I.D. Act, 1947 is just, proper and legal? If not, to what relief is the workman entitled to?"

2. The workman in his claim statement contends as follows :—The workman joined the company in December, 1987. His services were terminated by the company by its letter dt. 31-1-90 without assigning any reason but on vague ambiguous unclear contention of loss of confidence. The workman's salary at the time of termination was Rs. 1700 p.m. His services has been excellent without any blemish. The alleged ground of loss of confidence is baseless and false. On receipt of the termination, the workman made representation to the company. He has pointed out that because of some personal misunderstanding that the then Company Secretary Mr. M. R. Hegde had against him, an attempt was done to ruin his career. There was no response from the company. The workman had therefore, filed a complaint in the Industrial Court, Maharashtra at Bombay in ULP No. 295 of 1990. The company took a technical objection that the appropriate govt. for adjudicating the dispute raised by the workman was the Central Govt. The Industrial Court has therefore, passed an order dt. 19-12-90 rejecting the complaint on the ground that the complaint ought to have been filed in the Labour Court. The Industrial Court held that the appropriate Govt. was the State of Maharashtra. The workman, therefore, filed a complaint in ULP 117 of 1990 before Labour Court, Maharashtra. The company filed a writ petition in the High Court challenging the order of Industrial Court dt. 19-12-90 which was disposed off by the High Court with a direction to the company to agitate the jurisdiction issue before the Labour Court. In the Labour Court the company took a preliminary objection regarding the jurisdiction. The Labour Court by its order dt. 14-3-91 held that the appropriate govt. in this dispute is the Central Govt. and that the Labour Court has no jurisdiction. The workman moved the authority under the Central Government for adjudicating his dispute. Hence the reference. The service of the workman were terminated without following due process of law. It is mala fide and invalid. It would amount to retrenchment. The company has not complied with the procedure set out in Section 25-F of the I.D. Act. He is therefore, entitled to reinstatement with all benefits.

3. The management in their written statement contends briefly as follows : —The workman filed a complaint before the First Labour Court at Bombay in ULP 117 of 1990. Section 59 of the M.R.T.U. and P.U.L.P Act 1971 debars the workman from filing the complaint under the above Act. The present reference is therefore, not maintainable. The present demand has been raised by the workman after a delay of 15 months of termination. It is belated and on the above ground also it is liable to be dismissed. The company has lost confidence in the workman for his having indulged in certain objectionable activities and therefore, his services were terminated by a letter dt. 31-1-90. The workman was caught indulging in neferious activities against the interest of the Company during the weekly offs or other holidays of the company. The company is a financial institution engaged in financing the purchasers and leasing and other aspects in regard to Shipping industries and other industries in the Union of India. It is engaged in a sensitive nature of work, wherein reputed Corporate clients are involved. The shares of the company are held by other Financial institutions, Nationalised banks and the public at large. The company is governed by a Board of Directors including Govt officials. It is engaged in financing, purchasing and leasing of ships, fishing vessels, trawlers etc. Customers of the company demand extreme confidentiality in the matter of handling their operational information. The workman has executed a fidelity bond. On 9-12-89 around 8.30 a.m. Shri Premchand observed the workman entertaining some strangers in the office in the early hours of morning even though it was a holiday. It was observed by Mr. Premchand that the workman was xeroxing certain important documents of the company but stopped doing so on seeing Mr. Premchand. In the last week of Nov., 1989 it was discovered that the workman surreptitiously xeroxed confidential documents namely executed lease agreement between the company and one of its clients. It was a confidential loan document and ought not to have been on the files of other clients. The then Manager spoke to Mr. Premchand to 'plug' the source of leak of the Company's confidential document. Mr. Parathasarathy, Executive Director has observed that the workman would invariably land up in the office on weekly offs and other holidays. The Travel vouchers filed by the workman shows that the claim made by the workman was unreasonable. When the workman was issued with a 1st Class Season ticket from Churchgate to Dadar the workman became reluctant to do any outdoor work. It was noted down by the Executive Director in the Confidential report to the Managing Director of the company. The company has therefore, reached an objective conclusion that the workman had questionable loyalty and as such the company could not carry the risk of continuing him in the employment. It is under these circumstances his services were terminated on the ground of loss of confidence. There is no violation of the provisions of law or principles of natural justice. The employer is entitled to prove before the Tribunal the reasons for loosing confidence and justify the termination. The management, therefore prays for an opportunity to adduce documentary evidence to justify the termination of the services of the workman concerned.

4. The Issues framed by my learned predecessor that arise for consideration are :

(1) Whether the dismissal is without any enquiry and therefore, unjustified.

(2) Whether the first party justify its action of terminating the service on loss of confidence of the workman who has carried on activities against the interest of the first party.

Issue No. 1 & 2 :

The service of the workman has been terminated by the first party management by a letter dt. 31-1-89 on the ground that the management had lost confidence on the workman. My learned predecessor has heard both sides with regard to the preliminary objection raised by the management in view of Section 59 of the M.R.T.U. and P.U.L.P. Act 1971 and has over ruled the objection raised by the management by his order dt. 22-2-95. In the written arguments filed by the management, the management has raised the same as a preliminary objection and has further contended that the company has not questioned the legality and or propriety of the said order passed by my learned predecessor and the company reserves its right to do so if so advised. My learned predecessor has dealt with the preliminary objection raised by the management under Section 59 of the M.R.T.P. and P.U.L.P. Act of 1971 and over ruled the preliminary objection raised on behalf of the employer and fixed the matter for further hearing. As contended by them in the written arguments filed at present, the said order has not been challenged so far and it has become final since 4 years have elapsed, after passing of the said order on 22-2-95. Therefore, I hold that it is not open for the employer management to raise the same preliminary objection which was over ruled by my learned predecessor on 22-2-95, in their written arguments filed on 30-6-99 after the conciliation of the enquiry.

5. One other preliminary objection raised by the management with regard to the maintainability of this reference is that the termination order has been passed on 31-1-90 and the reference has been made to this tribunal only on 20-7-93 and on account of the delay in the reference the same is liable to be rejected. The employer has admitted that the workman herein has made a complaint before the Industrial Court at the first instance and before the first Labour Court at Bombay subsequently in filing a complaint in ULP No. 117 of 1990. It is not disputed by the management that they have filed a writ petition before the High Court in W.P. 3684 of 91 and it was disposed by the High Court with a direction to the company to agitate the jurisdiction issue before the Labour Court. The Labour Court in its order dt. 14-3-91 in ULP 117 of 1990 held as follows :

"The complaint is not tenable in law as this court has no jurisdiction in such cases where the appropriate govt. is the central Govt. considering the arguments of both the learned advocates I have come to the conclusion that the appropriate Govt. in this case is the Central Govt. and not the State Govt. and therefore, this Court has no jurisdiction to entertain the complaint". The 1st Labour Court, Bombay has held that the appropriate govt. is the Central Govt. and it is only thereafter the workman has taken steps for referring the matter for adjudication to this tribunal. It is not as if the workman has initiated conciliation proceedings long after the termination order and got the reference made to this tribunal in July, 1993. It is needless for me to observe that some time is taken by the Conciliation Proceedings and only after the same ends in failure the appropriate govt. makes the reference. Therefore, it cannot be stated that there is delay in this reference. The management has not only stated that there is delay in reference but has also contended that this tribunal has to keep in mind that in the event of any relief of back wages to be granted to the workman, the workman may be entitled for the same from 26-7-93 and not from the date of termination. It is also contended by the management that this Tribunal cannot travel beyond the date of reference and or beyond or prior to the date on which this tribunal received the reference. In any reference made to this Tribunal when workman is ordered reinstatement he is also awarded back wages and continuity of service from the date of termination. It is not as if in those cases the reference is made immediately on the workman was terminated from service. In those cases also sometime is taken by the conciliation authorities and only after the receipt of the failure report the appropriate govt. makes references for adjudication and if the workman succeeds, he is granted reinstatement with back wages and continuity of service from the date of termination. Therefore, there is no merits in the contention of the management that even assuming that the termination is found to be illegal, back wages cannot be awarded to the workman from 31-1-90 and he is entitled for back wages only from 26-7-93, the date of receipt of the receipt of the reference by this tribunal. The objection raised by the management with regard to the payment of back wages in the written arguments filed by them even before the tribunal decides the question whether termination is legal and justified is an objection without merits and it has to be rejected. As against the contention of the management in their written statement that the workman cannot be awarded back wages from 31-1-90 even assuming that the termination is found to be illegal and he is entitled for back wages only from 26-7-95, the learned counsel appearing for the management has referred to several decisions of the Supreme Court and Bombay High Court which lays down that in cases where discharge or dismissal of a workman is not legal or justified the relief which would ordinarily fall out would be reinstatement and that the tribunal has the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper. As per the decisions referred by the learned counsel appearing for the management if the management coolly believe that it was not possible to retain the workman in the company's service on grounds of Security and consequently could not place confidence in him any longer it would be a case where the general rule as to reinstatement could not properly to applied and that it does not mean that in every case where the employer says that he has lost confidence in the workman and therefore, has terminated his service the relief of reinstatement cannot be granted and the tribunal has to

award compensation. If on the other hand on an examination of circumstances of the case the tribunal comes to the conclusion that the apprehensions of the employer were genuine and the employer truly felt that it was hazardous or prejudicial to the interest of the industry to retain the workman in his service on the ground of security, the case would be properly one where compensation could meet ends of justice. Therefore, in order to appreciate the various decisions relied by the learned counsel appearing for the management it is incumbent on this Tribunal to decide whether the plea that the management has lost confidence in the workman is a justifiable plea. Termination on loss of confidence is permitted without enquiry and if the said termination is permitted, it is open to the employer to establish that it is based on relevant materials. Want of confidence in an employee points out to a adverse facet in his character as the true meaning of the allegation is that the employee is faced to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. The termination on the ground of loss of confidence amounts to a stigma and therefore, it has to be shown before the Tribunal that the management is justified in terminating the service of the workman on the ground of loss of confidence. It is under this back ground we have to approach the case on hand.

6. It is the case of the management that it had terminated the service of the workman since it had lost its confidence on the workman on two grounds. The first ground is he had taken copies of confidential report of the Customers of the Management. We can deal with it later. The second ground is he has claimed Rs. 6000 by way of Travelling Allowance and when it was found out that he has made a false claims and he was provided with a first class ticket between Churchgate and Dadar he had lost interest in outdoor work and has not even maintained the log book. As far as the management is concerned they have not conducted enquiry on the ground that it is a financial institution having Corporate bodies as their customers and it is not in the interest of the customers and the company itself to let out that confidential reports are not confidentially kept by holding an enquiry and it may affect their relationship. But such a reason cannot be given for initiating an enquiry against an employee of that company if the employee was found to have made false claims by way of Travelling Allowance, for doing outdoor duty. The first witness examined on behalf of the management has not stated anything about this charge. The second witness examined on behalf of the management in his affidavit filed in lieu of Chief Examination has stated that from the Travel vouchers filed by Mr. Shetty it is seen, he had taken an amount of Rs. 6000 by way of alleged taxi fare in a short span of 4 months that it was found extremely unreasonable and therefore, he was issued a first class Travel ticket from Churchgate to Dadar with a view to reduce the expenses, and it was discovered that Mr. Shetty suddenly became reluctant to do the outdoor duty and stopped maintaining his log books. But during cross-examination this witness has stated that he was not dealing with Accounts and whatever he has stated in his affidavit was brought to his notice by Mr. Pinge informally and Mr. Pinge informed him that Mr. Parathasarathy had received a report from him. But Mr. Parathasarathy has not stated anything about this claim of Rs. 6000. At a later stage of cross-examination MW-2 say that he was informed by Mr. Pinge some time after Feb. '90 about the things mentioned by him in his affidavit; but he adds that he was not sure because Mr. Pinge was succeeded by Mr. Kishore. He has admitted that he cannot say if it was M. Pinge or Mr. Kishore who told him about the fact contained in his affidavit regarding this Rs. 6000 claim. It is also admitted by MW-2 that he was not sure if Mr. Pinge had left the company in 1989 itself. According to MW-2 it is correct that the service of the workman Mr. Shetty were terminated because there was a suspicion that he has passed a copy of the document pertaining to one client to the other client and also that his taxi fare bills were inflated. As regards the inflating of taxi fare bills are concerned MW-2 has stated that he was informed of the same sometime in Feb' 90 by Pinge or by Mr. Kishore. The workman has been dismissed from service on 31-12-1989 itself. It is not explained as to how the management chooses to contend that they have lost confidence in the workman on account of his claim for an exorbitant figure by way of taxi fare. Therefore, the claim of the management that they have lost confidence on the workman on this ground is to be rejected.

7. Now let us consider whether the management has made out a case that they are justified in contending that they have lost confidence in the workman. The workman has contended in his claim statement that due to personal enmity between himself and Mr. Hegde, Secretary of the Company, on account of certain misconduct of Mr. Hegde by encashing the amount he got deposited in the account of Yaksha Natya Mandali in which his wife was the President, Mr. Hegde who was holding the post of Secretary in the Company was able to get him dismissed from service on the ground of loss of confidence. In other words, it is the case of the workman that he was victimised by the Secretary who did not like his interference in the encashment of the cheques deposited in the name of Yaksha Natya Mandali. Victimisation is a serious charge of an employee against an employer and therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The onus of establishing a plea of victimisation will be upon the person pleading it. It is no doubt true that the workman has raised case of victimisation in the written arguments filed by him. It has not been pleaded in the claim statement filed by him. The workman has written a letter on 15-12-89 to the Executive Director stating that the Company Secretary asked him to resign from the company on the previous day and threatened him that he will be terminated from the company. He had also given a complaint to the Worli Police on 23-1-90 and Chember Police on 20-1-90 and in those complaints the workman has not chosen to make a specific allegation that because of his objection with regard to the encashment of cheques in the name of Yaksha Natya Mandali by the Secretary of the Company, the Secretary has asked him to resign and threatened him that he would be dismissed from service. If really Mr. Hegde had asked the workman to resign and threatened him to dismiss him if he does not resign,

the natural conduct of the workman would be to state the reason for the misunderstanding at the earliest opportunity either to the Executive Director in his letter dt. 15-12-89 or to the Police Inspectors in his complaints specifically; but these 3 documents marked on behalf of the workman as W-1, W-2, W-3 do not show that Mr. Hegde has victimised him for his interference. Therefore, the theory of victimisation pleaded by the workman has to be rejected.

Now we have to see whether the management is justified in stating that they have lost confidence on account of the activities of the workman. As per the evidence of MW-1 the action on the part of the workman surreptitiously removing xerox copy of important documents from the company, that too, on days when the workman was supposed to be on his weekly offs, the company forced to terminate his services on loss of confidence and he had sent a report to that effect to the Managing Director. MW-1 has stated that after going through the report of Mr. Premchand as well as one report of Mr. Yogesh Shah regarding the questionable conduct of the workman with regard to the document of the company, he has sent his confidential report on 18-12-89. During cross-examination MW-1 has stated that the workman is not working directly under him and he would report to the Manager (Admn.) Mr. Hegde. He has also stated that Mr. Premchand informed him that he has taken possession of the xerox copies prepared by the workman, that Mr. Premchand told him that workman had prepared one copy of one document by xeroxing, that Mr. Premchand did not show him the xerox copy and he also did not ask Mr. Premchand to show him the xerox copy and that they have not filed the aforesaid xerox copy on the record of the tribunal. It is further stated by him that no endorsement was made in the xerox copy seized from the workman stating the fact of seizure. From the above evidence of MW-1 we can gather that Mr. Premchand caught hold of the workman while taking xerox copy and recovered it also and informed the same to his Executive Director namely MW-1 and on his statement only the Executive Director sent a confiedntial report to the Managing Director. Mr. Premchand has been examined as MW-3. According to MW-3, on 09-4-89 he saw Mr. Shetty photo copying certain documents belonging to the company and the strangers who had accompanied him were looking on. This evidence of MW-3 in his affidavit would show that he had actually seen the workman taking xerox copy of the company's documents. It is further confirmed by his further evidence that Mr. Shetty upon seeing him in office was surprised and quickly stopped xeroxing and attempted to replace the documents from where he had removed the same. This would indicate that MW-3 was aware from where the document was taken by the workman and had stopped taking xerox copy when he attempted to replace the same, in its position. But during cross-examination he has stated that he did not go near Mr. Shetty to check up which documents were being xeroxed. When he asked Mr. Shetty what documents is xeroxing Mr. Shetty told him that they were some certificate from the School of the child. Evidence of MW-3 during cross-examination would go to show that his earlier version in the affidavit that Mr. Shetty was photo copying documents pertaining to the company and he attempted to replace the same in its original position cannot be true. It is further stated by MW-3 that he doubted the statement of Mr. Shetty but he did not seized the xerox copies of the originals thereof and that by the time he had asked him Mr. Shetty had rolled up the papers and walked out. He has also stated that he had no occasion to see what papers had been xeroxed by Shetty. It is further stated by him that Mr. Shetty had rolled up the papers and he could not verify as to what papers have been xeroxed by Mr. Shetty. It is categorically stated by him that it is correct that he could not have made out that the papers with Mr. Shetty were resembling their official papers. This evidence of MW-3 during cross-examination would indicate that whatever he has stated in his affidavit cannot be accepted since in his affidavit he has stated that Mr. Shetty was Photo copying company's documents and was attempting to replace the same on seeing him while in cross-examination he has pleaded comp'ete ignorance of the nature of the document. In his report dt. 11th December, 1989 MW-3 has stated that he enquired Mr. Shetty what he is copying and he told him that it is his personal papers concerning his son's admission to School; but he saw that the papers were computer print and resembled their office notes, and he folded the papers, he was not able to read the name of the not. The papers for which xerox copy was said to have been taken were computer print is not spoken by MW-3 neither in Chief-Examination nor in cross-examination. It is the specific case of the management that Mr. Premchand has been directed to watch the source of the leak of the confidential papers with particular reference of doubt on the workman. While so, if really Mr. Premchand had seen the workman taking xerox copy of confidential papers one would expect him to seize the copies as well as the originals from the workman. But he has not seized those papers; but MW-1 says that Mr. Premchand informed him that he had seized the xerox copy of the documents. When all these materials are considered the very fact whether Mr. Premchand has really seen the workman taking xerox copy of documents on 9-12-89 is doubtful. It is further confirmed by the fact that it is only on 11th December, Mr. Premchand reports the matter to his superiors. It is to be noted that in his evidence MW-3 has admitted that there is a telephone in the office and also a telephone in the residence of MW-1, the Executive Director. But it is submitted by him that he did not inform the fact of the workman taking xerox copy of the document on Saturday namely 09-12-89, immediately to the Executive Director when he found out the same. Failure of MW-3 to report the matter of MW-1 immediately also throws doubt on the version of the management witness.

The reason for requiring Mr. Premchand to keep a watch on the workman especially on Saturdays and Sundays is spoken by MW-2. According to MW-2 it was discovered around last week of Nov. 1989 an

executed copy of resettlement, between the first party Employer and one of its important and large clients. before execution of the same by the party it was on the file of the client where it ought not to have been and the said document was a very confidential document and it ought not to have on the file of the other clients prior to execution, and it was on account of the same he had asked Mr. Hegde to find out the source of leak of the Company's confidential documents. But during Cross-examination MW-2 has stated that he had seen xerox copy pertaining to Great Eastern Shipping Co. in the file of Essar Shipping Company, that was sometime in the last week of Nov. 1989, when Mr. Goel, of Essar Shipping Company came to him with the file of the other Company. But MW-2 admits that he did not ask Mr. Goyal from where he had obtained the xerox copy and he did not point out to Goyal that his file is containing the xerox copy pertaining to another company. According to MW-2 he had prepared a written note in this regard and submitted the same to Mr. Parthasarathy but he admits that he did not mention in his affidavit. If MW-2 had seen xerox copy pertaining to Great Eastern Shipping Co. in the file of Essar Shipping Co. the natural conduct would be to question Mr. Goyal as to how he had got the xerox copy of the documents of the other company but he has not chosen to do so. The alleged written note said to have been prepared by him with regard to this incident and which was submitted by him to Parathasarathy has also not seen the light of the day. There is no reason as to why this very fact of finding the xerox copy of a document of one company in the file of another company which gave rise to suspicion has not been mentioned in his affidavit. At a later stage of cross-examination MW 2 has stated that he had not seen the xerox copy of the documents of Great Eastern Shipping Co. on the file of Essar Shipping Co He has also stated that what he had seen was a draft agreement to be signed which was similar to the lease agreement signed between their company and Great Eastern Shipping Co: and that actually he has not seen a xerox copy with Mr. Goyal but he had seen only a draft agreement. The sudden change of his evidence during cross-examination from xerox copy of a document to a draft agreement throws considerable doubt on the very version of MW-2 that he had seen something in the file of Essar Shipping Co. The very source of the doubt with regard to the leakage of the documents itself is now very suspicious. When we consider the evidence of MW-3 with particular reference to the reason as to why he was asked to keep a watch on the workman, I am of opinion that the version of the management that the workman had surreptitiously taken xerox copy of the document is far from satisfactory. It is to be noted that it is not as if the workman is entrusted with confidential papers for safe custody. Even, according to MW-1 his job is like that of a Messenger to bring papers from the record room to the Officers who demands it. It is also in the evidence that even if the workman is not present in the office, the record room will be kept open and the Secretaries of the Officers used to provide the documents demanded by the Officers. It is also in evidence that apart from the Chair occupied by the workman there are two or three more chairs in the same room occupied by the Drivers and Others. It appears that it is not as if the entire record room is under the control of the workman alone. MW-1 has stated that even though files may not be missing there are instances of their misplacement and they will be found after a search. In the above circumstances, it cannot be stated that it was the workman who had taken xerox copy of Eastern Shipping Co. papers in the last week of Nov., 1989 and it has given room for suspicion and he was caught red-handed by Mr. Prem Chand on 9-12-1989. The allegation loss of confidence attaches a stigma on the character of the workman and by merely stating that the management has lost confidence, the workmen cannot be terminated without any enqtiry or compliance of the provisions of 25-F.

It has been repeatedly stated in the written arguments of the first party management that no less a person in the position of the Executive Director who is at the top of the hierachy of officials of the company has sent a report to the Managing Director that it is not expedient in the interest of the company to continue the worker in the service of the company and the Executive Director has also given evidence before this Tribunal that they have lost confidence in the workman and therefore, it has to be accepted and the dismissal order passed on the workman on the ground of loss of confidence has to be confirmed. It is no doubt true that MW-1, the Executive Director who is in the top position of officials in the company has sent a report to the Managing Director and also given evidence before this Tribunal that the company has lost confidence in him. But it is to be noted that MW-4 has stated in cross-examination that Mr. Shetty was not required to maintain the files but was only required to see that they are kept properly in the record room. He has also stated that the Officers themselves are maintaining files. It is further stated by him that they have not placed on record any circular showing the duty of Mr. Shetty as in-charge of record room and it is correct that he had no personal knowledge about the documents being xeroxed by Mr. Shetty and his information is based on what Mr. Hegde and Mr Yogesh Shah reported. It is argued that hearing evidence is admissible in labour Court. It is true that hear say evidence is admissible in a proceedings in Labour Court. But Mr. Hegde who was said to have given the information to MW-1 and against whom serious allegatiaons were made by the workman has not been examined. We have already seen that the evidence of MW-2 Mr. Yogesh Shah is not beyond doubt. In the above circumstances it cannot be stated that on the evidence of MW-1, the contention of the management that it has lost confidence on the workman has to be confirmed.

The management has examined MW-4 to prove that the workman was gainfully employed after he was terminated from service. MW-4 is a private investigator of one JAL Consultancy Service. In his affidavit he has stated that on 8th June, 1997 he came to the Court and he followed Mr. Shetty after the matter was adjourned as per the instructions given to him. He has also submitted a report which is to the effect

that he has commenced his investigation on the workman at 10.30 on 08-1-97. But during cross-examination he has stated that after a letter dt. 9th Jan., 1997 by the first party management herein to JAL Consultancy Service he started investigation in the affairs of the workman Mr. Shetty. He has stated that he does not know when this letter dt. 9-1-97 was issued by Concultancy Services and he does not remember the date of which he had started investigation into the affairs of Mr. Shetty. The letter of authority filed by the management to JAL Consultancy is dt. 9-1-97. It is an annexure to the affidavit of the witness MW-4 when the service of JAL Consultancy services were obtained by the management after retaining them on 9-1-97 it is not, known how MW-4 has started investigating the affidavits and source of employment of the workman herein even on 8th Jan., 1997. According to MW-4 he does not know where CGIT-1 is located. According to him it is next to Victoria Terminus and it was in the 4th or 5th floor. When this witness says he does not know where the CGIT court is located and when his report and evidence is to the effect that he has started investigation on 8th January, 1997, the veracity of the truth of this witness is doubtful, since as per the report of this witness dated 11-1-97 and the consequent letter of JAL Consultancy Service to the management are to the effect that the management has addressed letter to the JAL Consultancy for a confidential investigation only on 9-1-97. This aspect goes to show that the management has chosen to examine the witness to prove that the employee was gainfully employed and this witness is not a creditworthy witness. When the manageemnt has chosen to examine such a person an inference can be drawn to the effect that they want to establish that the management has lost confidence on the workman and dismissed him and after the dismissal he was gainfully employed. But a perusal of the evidence of Mr. Muigulla Khan, MW-4, and his report and the annexures attached to his report only throws considerable doubt on the claim of the management, both on the question of loss of confidence and their version of gainful employment of the workman after dismissal It is held in the decision reported in 1994 I CLR page 254 between S. K. Awasthi vs. M. R. Bhope Presiding Officer 1st Labour Court & Ors. "Mere putting forward of ground of loss of confidence is not enough to deny reinstatement. There must be some basis or tangible mateiral or circumstantial evidence to indicate that the plea of employer to deny reinstatement to the workman was bonafide." In the case on hand materials placed before this tribunal are not enough to record that the management has justifiably lost confidence in the workman. In that view I am of opinion that termination of the service of the workman on the ground of loss of confidence by the management without complying with the provisions of the Section 25-F of the I.D. Act is not justified and therefore, he is entitled to an order of reinstatement.

The learned counsel appearing for the management has argued that even if it is held that the termination of the workman from service on the ground of loss of confidence is not accepted, the workman need not be granted relief of reinstatement with back wages and he may be awarded compensation. This argument of the learned counsel appearing for the management is not convincing since the tribunal has to ensure that the claim of loss of confidence is genuine and is based on the objective facts lest the protection afforded to the workman becomes illusiory. In view of the failure of the management to establish before this tribunal that the management has lost its confidence on the workman for justifiable reasons, I am of opinion that the workman is entitled to not only an order of reinstatement but also the relief of back wages from the date of termination and continuity of service. Therefore, I hold on Issue No. 1 that the dismissal of the workman without an enquiry is unjustified and on issue No. 2 that the workman has not been shown to have carried out activities against the interest of the first party and therefore, the first party is not justified in its action of terminating the service of the workman on loss of confidence.

In the result, an award is passed holding that termination of the services of Mr. T. R. Shetty w.e.f. 31-1-90 without complying with the Provisions of I.D. Act is neither just nor proper, nor legal and therefore, the workman is entitled to an order of reinstatement with back wages and continuity of sevice from 1-2-90.

An award is passed accordingly.

C. V. GOVARDHAN, Presiding Officer

नई दिल्ली, 21 जुलाई, 1999

का.आ. 2299.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भिलाई स्टील प्रोजेक्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-99 को प्राप्त हुआ था।

[सं. एल.-26011/10/85-डी.-III(बी.)]
बी.एम. डेविड, डैस्क अधिकारी

New Delhi, the 21st July, 1999

S.O. 2299.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhilai Steel Project and their workmen, which was received by the Central Government on the 21-7-99

[No. L-26011/10/85-D-III(B)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

PRESIDING OFFICER SHRI D. N. DIXIT

CASE NO. CGIT|LC|R|111|87

Managing Director, Bhilai Steel Project, Bhilai. ... Management

Vs.

Secretary, Samyukta Khadan Mazdoor Sangh (AITUC) P.O. Dallirajhara, Distt. Durg. .. Union

AWARD

(Delivered on this day of 24th May, 1999)

The Government of India, Ministry of Labour vide its Order No. L-26011|10|85-D.III(B) dated 13-7-87 has referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of Bhilai Steel Plant is justified in not granting the benefit of leave as provided under FR & SR Rules to the employees of the Township Civil and Electrical Maintenance and Horticulture Department of the Iron Ore Mines as being allowed to workers engaged in similar nature of work at the plant ? If not to what relief the concerned employees are entitled ?"

2. The case of the union is that Bhilai Steel Plant owns Iron Ore Mines at Dalli Rajhara. In this town water supply, Civil Maintenance, Electrical Maintenance and horiculture department are managed by the Bhilai Steel Plant. The departments have been supervised by Bhilai Steel Plant. In Bhilai Township also these deptts. are attended by the Bhilai Steel Plant and the employees are allowed earned leave one day for 11 days and 15 days casual leave in a year from the date of appointment. The employees of tele-communication Deptt. at Bhilai and Dalli Rajhara are in matters of leave at par with Bhilai. The employees of Horticulture, water supply and civil and electrical maintenance get E.L. of 1 day for every 11 days and 15 days of casual leave at Bhilai. In the similar sections at Dalli Rajhara, the employees of these deptts. are getting earned leave 1 day's for 20 days and casual leave of 7 days. Employees of Dalli Rajhara are government by the standing order for mines. They are claiming the same earned leave and casual leave which their colleagues are getting at Bhilai from the day of appointment.

3. The contention of the management is that employees of the Dalli Rajhara Mines are governed by the standing order for mines and their leave is regulated in terms of the said standing order. Their counter part in Bhilai is governed under different rules and laws and their can not be any comparison. The management has not discriminated between employees of one deptt. and employees of other deptts at Dalli Rajhara. The employees can not be allowed to have the benefits enjoyed by the workers of steel plant Bhilai as they are governed by different set of rules and orders.

The management has not discriminated between employees and employee. The employees of tele-communication dptt. at Dalli Rajhara are not getting more earned leave and casual leave than other employees at Dalli Rajhara. The union is not entitled to claim the leave as prayed. The employees working in various deptts in the mines at Dalli Rajhara or not entitled to leave facilities under FR and SR. The management wants Award in their favour.

4. None of the parties have filed any documents and has not led oral evidence. The union has remained absent from 2-2-98 onwards.

5. The union has admitted in para-11A of statement of claim that the employees of mines at Dalli Rajhara in electrical and Horticulture Deptts. are governed by the standing order for mines. This is the case of the management also. This proves that at Dalli Rajhara the employees of Civil, Electrical and Horticulture Deptts. are governed by standing order for mines.

6. The enhancement of leave can be adopted only under the Industrial employment standing order 1946. Sec. 10 of the Act provides for modification of the standing orders. This has been made applicable to the Dalli Rajhara mines employees w.e.f. 9-11-63. Since this day, the employees of the Dalli Rajhara Mines are getting leave facilities as provided by the standing order dt. 26-10-63. The employees working in a deptts. of Civil, Electrical and Horticulture are bound by this order.

7. The main contention of the union as gathered by the statement of claim is that the employees of Bhilai Seel Plant at Bhilai Nagar are getting better leave facilities. The reply of the management is that these employees at Bhilai are governed under different sets of rules. The 2 sets of rules can not be compared as they are different and not related to both services. Employees working in the Iron Ore Group of Mines are not employees of the Central Government and provisions of FR and SR are not applicable to them. The Supreme Court has held in AIR 1963 SC 630 that there is no discrimination if different employees at different institutions get different types of leave.

8. The inference of above discussions is that the union failed to establish that there is a discrimination between employees of Dalli Rajhara in the deptts of civil, electrical and horticulture. The union also failed to establish that these employees are entitled to facilities provided under FR and SR. The award is given in favour of the management and against the union. Parties to bear their own costs.

9. Copies of award be sent to Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 21 जुलाई, 1999

का.आ. 2300.—औद्योगिक विवाद अधिनियम, 19 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्री सरकार मुम्बई पोर्ट ट्रस्ट के पक्षकारों के बीच निर्दिष्ट

और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. I, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-99 को प्राप्त हुआ था।

[सं. एल.-31012/19/91-आई.आर. (विविध)]
बी.एम. डेविड, डैस्क अधिकारी

New Delhi, the 21st July, 1999

S.O. 2300.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No.-I, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bombay Port Trust and their workman, which was received by the Central Government on the 21-7-99.

[No. L-31012/19/91-IR(Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT :

Shri Justice C. V. Govardhan, Presiding Officer

REFERENCE NO. C.G.I.T. 28 OF 1992

PARTIES :

Employers in relation to the management of Mumbai Port Trust.

And

Their Workmen.

APPEARANCES :

For the manageemnt—Shri M.B. Anchan, Advocate.

For the Union—Shri Wagh, Advocate.

STATE—Maharashtra.

Mumbai, dated the 13th day of July, 1999

AWARD

1. The Central Govt. by its order dated 30th March, 1992, has referred the following dispute between the managemnt of Bombay Port Trust and its workman for adjudication by this Tribunal.

> "Whether the Order|Circular No. Con-Div|Circular|3 of 1989|90 dated 19-5-89 issued by the Dy. Docks—Manager, Container Division, Bombay Port Trust for Stevedors-wise deployment of gant of Labour, Supervisory Staff and allied category dock workers in stuffing and destuffing of containers without any notice under Sec. 9-A of the I.D. Act, 1947, is legal and justified ? If not, to what relief are the workmen entitled ?

2. The workmen in their amended claim statement contends as follows.—The Deputy Docks Manager, Container Division of the Bombay Port Trust issued a circular dated 19-5-89 to Stevedores and others and conveyed the decision of B.P.T. to permit B.S.A. Ltd. to change the manning scale pertaining to the deployment of various categories of workmen for stuffing and destuffing of containers and thus illegally changed the existing service conditions of the workmen w.e.f. 20-5-1989. Prior to the aforesaid unilateral illegal change in service conditions of the workmen, the BPT and B.S.A. Ltd. used to deploy a set of workmen for stuffing or destuffing of container operations in Docks including Extended areas of Docks. For stuffing 38 workmen and for destuffing 34 workmen will be employed. If the container is of 40' in length, then 4 more UPMs will be booked. For destuffing also, if containers belonging to two different shipping line are involved, then stuffing containers of each of the Shipping Line, was used to be considered as an independent 'working point' and 2 sets of workmen used to be deployed for handling container stuffing operations of both the Shipping Lines. Similarly, for destuffing also separate sets of workman will be deployed, if destuffing work involves containers belonging to two ore more shipping lines. If a stevedore had 4 containers belonging to 5 different shipping lines then he used to deploy 5 sets of workmen. The Union when it came to know of the change introduced, addressed a letter to the Chairman informing him that it is illegal. It requested the Chairman to withdraw the circular. The Union also informed the Regional Labour Commissioner (Central) by letter dated 02-6-89 about the industrial dispute relating to illegal change introduced. Prior to 08-1-85 the BPT and BSA attempted to change the manning scale by reducing the strength of the workmen for stuffing and destuffing. They have also issued notices under Section 9-A of the Industrial Dispute Act. If the proposed changes are implemented it would adversely affect the service conditions of the workmen, mainly increased workload and consequently workmen equal to the reduced number in the set of workmen would be rendered surplus. The union when came to know of the illegal change in the service conditions of the workmen opposed the same. In the discussion that took place between the Union and the B.P.T. BSA Ltd. no settlement could take place. The union served notices of strike dated 15-1-85. The Dy. Chief Labour Commissioner (Central), New Delhi intervened and held a conciliation proceedings and a settlement was arrived at on 24-1-85. The BPT and BSA agreed to withdraw the notices of change and the union agreed to withdraw strike notice The discussions between the parties continued but was no concluded. The agreement dated 24-1-85 stipulated that in case of any difference between the parties, the Ministry of Shipping and Transport should be sought for arriving at an amicable settlement. But without complying with the said Provisions, the BPT has now served a notice on 19-5-1989 and terminated the settlement dated 24-1-85. It has also introduced change in the service conditions of the workmen of manning scales required for stuffing and destuffing of containers. The service conditions were in vogue for several years and it was agreed to continue the same as per the settlement dated 24-1-85. But it was changed unilaterally as per the circular dt. 19-5-89. The reduction in strength of the workmen deployed for the purpose of stuffing and destuffing has deprived work for substantial number of workmen as far as reduction in their earning. It has resulted in their

unemployment to a large number of registered dock workers. The Board was forced to consider retrenchment of workmen for the first time in the history of the Bombay Dock Labour Board. The change attracts the provisions of section 9-A of the I.D. Act. Without following the procedure laid down under the law, the BPT had issued a circular dated 19-5-89 and implemented change in service conditions unilaterally. It is against law and in violation of section 9-A of the I.D. Act. The implementation resulted in mass retrenchment, through voluntary retirement scheme. The relevant figures are in the Annual report of Bombay Dock Labour Board. The change in the service conditions when the number of workmen employed was 7201 and the cargo handled was 7.14 m. tones+3,10,000 containers in the year 1989-90. In 1992-93 the number of workmen employed were 5095 the cargo handled was 8.10 m. tonnes+3,15,000 containers. About 2106 workers were found surplus though the cargo handled by the workmen in the year 1992-93 is increased by 0.96 m. tones+5,400 containers. Therefore, the change in service conditions introduced w.e.f. 19-5-89 is illegal. Hence, the union prays for an Award and order declaring the said circular as illegal with directions to BPT and BSA to restore the service conditions as they were in existence before 20-5-1989.

3. The BPT in their written statement contents as follows:—

The Dy. Manager by issuing a circular dt. 19-5-89 to all the Vessel Agents, Container Operators, Stevedores and Clearing Agents informed them that it was decided to permit stuffing as well as destuffing operations by the same gangs and also to permit stuffing and destuffing operations of more than one vessel even if the vessels may be of different Agents. The Union objected to the said circular on the ground that it was a unilateral action by the management without issuing any notice. The matter was discussed. There was no settlement. Hence the present reference. Prior to the circular, separate gangs were doing the stuffing and destuffing operations. It was decided to permit stuffing|destuffing operations by one of the same gang and to permit such gangs to do stuffing and destuffing containers of more than one vessel and of different Agents only with a view to ensure full and proper utilisation of Labour. As per the earlier system where one gang used to do stuffing and destuffing work of only one vessel of one agent, if only a few containers worth of work was available for the gang and the gang which has no work will simply idle away even though containers of other vessels and of other agents might be available for stuffing or destuffing. Considering the number of occasions, the gangs used to just fritter away the time when sufficient number of containers of one vessel—one agents were not available for stuffing and destuffing work. In order to check the unnecessary wastage of man power, change under reference was introduced. It has not affected the working conditions of the workman but only made the deployment of labour more efficient as allocation and deployment of labour is part of the management function. The circular is only a reiteration of the existing practise in Bombay Dock even now when a breakbulk vessel discharges import cargo during a part of the shift and loads export cargo during the remaining part of the shift the same gang does both unloading and loading operations. Destuffing and stuffing operations of the containers are similar activities. The introduction of the circular has in no way altered the service conditions of the workmen and therefore the present dispute raised by the Union is without any basis. In the Fourth schedule to the I.D. Act item No. 4 is in respect of "Hours of work and rest intervals". The BPT has not changed working hours of the shift or rest intervals. Therefore, there is no necessity for issuing a notice under section 9-A of the I.D. Act. Only with a view of utilising optionally the labour and staff and to reduce the cost of destuffing|stuffing of containers, a conscious decision was taken to make the same gang do stuffing and destuffing containers, and the same gang do stuffing and destuffing containers of more than one vessel and more than one agent. The BPT has not laid down any staff by implementing the said circular nor retrenched any workmen nor the implementation of the said circular reduced the monetary benefits available to the workmen. The circular issued is therefore, justified and legal. A shed or a yard is termed loosely as one point but containers of one shipping line or one agent was never considered as one point. Stuffing operations was not considered as one point and destuffing as another point. The practise of one Stevedor engaging one gang and containers of different lines was very much in vogue. The practise of one gang for stuffing and destuffing work had been giving rise to unnecessary wastage of labour and escalation of container handling cost. It resulted in under utilisation of Labour and it gives rise to anamolous situation in which on the one side gang would be going idly for want of containers and on the other side the containers of other lines may be starving for want of labour. The concept of one gang one line was directly pushing up the container handling cost. If a gang is booked on the container of more than one line many containers would be available for stuffing| destuffing and so the cost of the full gang would be spread over more number of containers and the cost per containers would thus be reduced. The circular is in no way had breached the conciliation settlement dated 24-1-85. The issue at that time was change in the service conditions and manning scales whereas the circular under challenge has not in any way touched the service conditions of the concerned workment. The circular was issued after terminating the said settlement. It was issued with the bonafide intention and in accordance with the Administrative procedures. Giving notice under Section 9-A does not arise since the circular did not contemplate any change in service conditions. The financial difficulties of Bombay Dock Labour Board was due to the all round decline in Traffic in all types of cargoes and not because of the change brought about by the circular to overcome the difficulties for the Bombay Dock Labour Board. An agreement was arrived on 13-12-91 between the Bombay Dock Labour Board, the Bombay Port Trust and the representatives of the various unions including the Transport and Dock Workers Union. The rationalisation and standardisation of Labour deployment brought by the circular has not brought down employment opportunities to the workmen and it has not reduced their earnings. The circular was issued to optimise labour utilisation and to bring down container handling cost. It does

not attract the Provisions of the of the I.D. Act. It is therefore, justified. It may be held that the circular dated 19-5-89 is just and proper, and the workmen are not entitled for any relief.

4. The only point for consideration that arises for consideration is whether the circular by Dy. Docks Management container Division dated 19-5-89 is legal and justified without a notice under Section 9-A of the I.D. Act ?

The Point :

The Transport and Dock Workers Union has raised the dispute contending that the circular dt. 19-5-89 by the Dy. Docks Manager Container Division for deployment of Gang of labourer in stuffing and destuffing containers without any notice under Section 9-A of the I.D. Act is not legal and justified, since it alters the service conditions of the workmen. According to the Union even in 1985, the BPT and Stevedores Association gave a notice of charge of service conditions in accordance with Section 9-A of the I.D. Act and when the proposed change in service conditions were sought to be introduced the union opposed the same contending that the changes if implemented would adversely affect the existing service conditions of the workmen. It is also the case of the Union that if the proposed changes were implemented there will be increased work load and consequently workmen equal to the reduced number in the set of workmen would be rendered surplus and therefore, they have raised the dispute and it went in for conciliation. According to the union, the union gave a strike notice and at the intervention of the Dy. Chief Commissioner a settlement was reached between the Bombay Port Trust and Stevedores Association on the one hand and the Union on the other hand by which the notice issued by the former dated 08-1-85 and the strike notice issued by the latter were withdrawn. According to the Union, all of a sudden the BPT and BSA without making adequate efforts to settle the issue of change in service conditions for manning or deployment of the said workmen for stuffing and destuffing of containers in spint and letters of the earlier settlement has issued the circular on 19-5-89. The term manning means to furnish with men for work. Therefore, manning and deployment is one and the same according to the union. The union has further contended that the deployment of workmen has mentioned in details of the claim statement was a practise in vogue for a long term. Hence, the withdrawal of the same would amount to change in service conditions. But it is the case of the BPT that prior to the issue of the circular dated 19-5-89 separate gangs were doing stuffing and destuffing operations and with a view to ensure full and proper utilisation of labour and more particular to reduce the cost of destuffing of containers it was decided to permit destuffing as well as stuffing operations by one and the same gang and also permit such ganges to do stuffing and destuffing of containers on more than one vessel and of different Agents. According to the management as per the earlier system when one gang used to do stuffing or destuffing work of one vessel or only agent and if there are few containers the gang after finishing the work in one vessel would idle away the time or go home even though containers of other vessel and of other Agents might be available for destuffing or stuffing. It is the case of the BPT that only to check the unnecessary wastage of man power the change in the reference was introduced in the circular dated 19-5-89 so that sufficient number of containers would be available to the gang for stuffing and destuffing work and could not amount to any change of service conditions and it would not result in retrenchment as alleged by the union and therefore, there is no necessity for issuing a notice under Section 9-A of the I.D. Act before implementing the circular dated 19-5-89. The Asstt. Secretary of the Union has been examined on behalf of the union. In his evidence he has stated that the BPT by its circular dated 19-5-89 effected change in service conditions of the workmen in respect of manning scale required for stuffing and destuffing of containers i.e. deployment of gangs and other categories of workmen for stuffing and destuffing of operations and this change in service conditions effected from 20-5-89 is illegal. But during cross-examination this witness has stated that the circular dated 19-5-89 does not pertain to the manning scale but it pertains to deployment of gang. Manning scale and deployment of gang are two different aspects is seen from this evidence of the only witness examined on behalf of the union. Therefore, the contention of the union during arguments that the term manning and deployment is one and the same fails to the ground.

5. The witness examined on behalf of the Union has made several admissions during cross-examination. They are as follows ; The circular dated 19-5-89 does not mention increase of work load. It does not change the working hours also. It does not speak of reduction of staff as well. It is further, admitted by him that by this circular no staff was retrenched but as a result of this circular 2000 workers were given voluntary retirement. According to this witness it is true that the voluntary scheme was accepted by the union and the union has not challenged the voluntary retirement of the workmen and that the workmen were given special reirement benefits. From the evidence of this witness examined on behalf of the union it is seen that voluntary retirement was given to the workers as per the agreement between the Union and the management and it was not challenged as certain special benefits were also given to the workers who opt for voluntary retirement and therefore, it cannot be stated that it is only in persuance of the notice dt. 19-5-89. About 2000 workers were given voluntary retirement. Voluntary retirement is not the consequence of the circular but it is an admitted mode of the employees ceasing to be the workers of the management on account of special retirement benefits given to the workmen who opt for voluntary retirement and which the Union has also approved. Therefore, the circular dated 19-5-89 when implemented it reduces the number of workmen who are found surplus is not a valid contention.

As regards the previous settlement between the management and the Union it is in respect of manning of the gang. Manning of the gang is a different one and it is not deployment of gang. It is spoken by the witness examined on behalf of the union. The notice dt. 19-5-89 is in respect of the deployment of the gang and it is not manning of the gang. According to the witness it is the function of the management to deploy gangs, according to the exigencies of work

and a gang has no right to say that it shall remain idle and will not be deployed. It is also admitted by him that there is no rule governing deployment of gangs in particular exigencies but there is a settlement; but the said settlement has not been filed by the union. As per the admission of the witness there is no rule governing deployment and it is the management's right to deploy gangs according to the exigencies. It is the specific case of the management that the circular dated 19-5-89 was issued to permit destuffing as well as stuffing operation by one and the same gang and also to permit such gang to do stuffing and destuffing of containers more than one vessel and of different Agents to have a check on unnecessary wastage of man power. Instances have also been stated by the management by contending that if one gang used to do the stuffing or destuffing work of one agent and if only a few containers worth of work was available for the gang, the gang would simply idle away even though containers of other vessels and other agents might be available for stuffing or destuffing. This aspect has not been denied by the union. Therefore, as per their right to deploy gangs and according to the exigencies of work, the management has chosen to issue the circular dated 19-5-89. The apprehension of the union that it would result in surplus man power resulting in retrenchment and there will be change of service conditions appears to be a misapprehension and therefore, I am of opinion that the objection raised by the union for implementing the circular dated 19-5-89 without issuing a notice under Section 9-A of the I.D. Act is without merits. The circular issued dated 19-5-89 being legal and justified the workmen is not entitled to any relief and an Award is to be passed dismissing the reference.

In the result an Award is passed holding that the circular dated 19-5-89 issued by the BPT and BSA are legal and justified. Therefore, the workmen are not entitled for any relief.

C.V. GOVARDHAN, Presiding Officer

नई दिल्ली, 21 जुलाई, 1999

का.आ. 2301.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुम्बई, पोर्ट ट्रस्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं.-1 मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-99 को प्राप्त हुआ था।

[सं० एल-31012/48/92-आई० आर० (विविध)
बी०एम० डेविड, डैस्क अधिकारी

New Delhi, the 21st July, 1999

S.O. 2301.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bombay Port Trust and their workman, which was received by the Central Government on 21-7-99.

[No. L-31012/48/92-IR(Misc.)]
B. M. DAVID, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT :

Shri Justice C.V. Govardhan, Presiding Officer.

Reference No. CGIT-64 of 1993

PARTIES :

Employers in relation to the management of Bombay Port Trust.

AND

Their workmen.

APPEARANCES :

For the Management—Shri Anchan, Advocate.

For the Workman—Ms K. N. Samant, Advocate.

STATE : Maharashtra.

Mumbai, dated the 7th day of July, 1999

AWARD

1. The Government of India by its order dated 17th September, 1993, has referred the following dispute between the management of Bombay Port Trust and their workmen for adjudication by his Tribunal,

> "Whether the action of the management of the Bombay Port Trust, Bombay in terminating the services of Shri. D. B. Naik, Security Guard after holding him guilty of charges for misconduct of absence without leave, habitual absence etc. in Ex-parte enquiry proceedings—when he was under treatment for "phychlogenic-amnesia" is just, proper and legal? If not, to what relief is the workman entitled to?"

2. The workman in his claim statement contends as follows :

The workman who joined the Bombay Port Trust as temporary workman on 19-9-1983 was confirmed and was discharging his duties regularly and properly. He became unwell sometime in November, 1987. He was not mentally keeping well. Therefore, he remained absent from 22-11-87 without sending any intimation, even when he received the letter from the Chief Security Officer calling upon him to report for duty he was not in a mental status to take note of it. Similarly when he received a second notice and a third notice also he was not in a mental status to take a note of the above notices. In October, 1989 some relative of the workman brought to the notice of the workman regarding an advertisement in Loksatta dt. 30-9-89 in which it was stated that an enquiry was consti-

uted against him. The workman was taking treatment in the K.E.M. Hospital at that time. Therefore, he wrote a letter on 4-10-89 informing the Manager that he had no intention to commit any misconduct and he desires to continue in service and that he would report for duty as soon as he was declared mentally fit. He had also enclosed a medical certificate to the said letter. He has received the communication dated 12-12-89 with the order of the Deputy Chairman dt. 4-12-89 imposing the penalty of removal from service with immediate effect. The workman tried to approach the authorities personally but he could not get himself reinstated. Therefore, he has made an attempt for reinstatement, the conciliation failed and hence the reference.

3. The management in its written statement contends as follows :

The workman was charged for the misconduct "Habitual absence without leave for more than 10 days, repeated offence and lack of devotion and duty and integrity. There was not reply. An enquiry committee was therefore, appointed to conduct departmental enquiry. The letters of enquiry sent to the postal address of the workman were returned and notice was published in the Marathi newspaper "Loksatta", Maharashtra Times, and Mumbai Sakal dated 7-11-88 stating that a domestic enquiry will be held against the workman on 22-11-88 at the administrative office. The workman failed to attend the enquiry. The Enquiry Officer, who held the enquiry ex-parte gave a finding that the charge against the workman has been proved. The disciplinary authority concurred with the finding of the Enquiry Officer and issue a show cause notice to the workman proposing to impose the penalty of removal from service. The said notice sent by registered post was returned to the sender "Address not known". It was therefore, published in the Marathi newspaper dated 30-9-89. The workman has sent a letter dated 04-10-89 stating that on account of the demise of his brother he was suffering from mental illness and undergoing medical treatment at the KEM Hospital. He has also enclosed medical certificate showing that he was treated in the said hospital from 27-9-89 to 4-10-89 It appears that he attended the hospital only from 27-11-89 after a lapse of one year ten months. The explanation submitted by him was not found convincing. Therefore, the Disciplinary Authority passed the order removing him from service with immediate effect on 04-12-89. The workman has been terminated for proved misconduct and his claim is therefore, to be rejected.

4. My learned predecessor has held that the enquiry in this case was not fair and proper and has given an opportunity to the management to prove the charges by its order dated 18-4-96, before this Tribunal. The management has examined the Administrative Officer as a witness to prove the charges against the workman. The workman has examined his father as WW-1 and has given evidence as WW-2 in support of his case.

5. The point for consideration is whether the termination of service of the workman by the BPT is just and proper and if not to what relief he is entitled ?

The Point.—In order to prove the charge against the workman, the management has examined the Administrative Officer and he would contend that the workman remained absent unauthorisedly for 43 days on 8 occasion and in 1987 he remained absent without prior sanction for 172 days on 19 occasions. MW-1 has also stated that the workman has pleaded that he was compelled to remain absent on account of circumstances beyond his control and on account of his sufferings from mental illness because of the sad and sudden demise of his elder brother and he was undergoing medical treatment in KEM hospital. As regards the claim made by the workman that he was suffering from mental illness due to the sad and sudden demise of his elder brother the management witness has not stated anything disputing the claim of the workman. All that MW-1 would say is that the workman has submitted a medical certificate dated 4-10-89 when he was charge sheeted for his unauthorised absence during 1986. During cross-examination MW-1 would say that the absence of 43 days in 1986 and the absence of 172 days in 1987 was not continuous during those years. MW-1 also admits that the post sanctioned leave of absence during 1986 and 1987 were also included in the charge sheet issued to the workman. Therefore, it has to be held that certain dates of absence during 1986 and 1987 have been regularised by the workman by producing medical certificate. Admittedly by MW-1 the management has not asked the workman to move the application for leave supported by medical certificate. It is also admitted by MW-1 that letters addressed to the workman were returned by the postal authorities with remarks "Not found". It is now a recognised principle that endorsement by postal authorities as "Not Found" cannot be considered as proper service. It is also now held that publication of a departmental enquiry in newspaper cannot be considered as proper service of the charge sheet. In the present case the enquiry has proceeded ex-parte without proper service of the charge sheet and the notice issued by the Enquiry Officer. The management has therefore, no occasion to learn the reason for the unauthorised absence of the workman during the period in question.

6. The specific case of the workman is that his brother committed suicide by setting fire to himself and on seeing the same he was shocked and lost his speech and it has adversely affected him to certain extent that he lost interest in life and his activities were beyond his control and his activities were done without his understanding the same. He has also stated that he has stopped talking with he family members and mental pressure was built up in his mind and it resulted in his irregular attendance. The father of the workman who has been examined as WW-1 has stated that the elder brother of the workman who quarelled with his wife poured kerosene on himself and set fire to himself and died later and it has affected the mental condition of his son, the workman herein. He has also stated that himself and his other family members were not even in talking terms with the workman on account of his marrying a girl of his own choice. From the evidence of WW-1 and WW-2 it is seen that the workman herein had shock which has affected his health

and mental condition and he was doing things without knowing the consequences of the same. WW-1 has stated that the workman was hospitalised for 3 or 4 months, that he was admitted originally in the hospital at Parel then in J.J. Hospital, Nagpada and ultimately at KEM Hospital. According to WW-1 his neighbours advised him to take the workman to KEM Hospital and the workman was admitted in KEM Hospital. It is the case of WW-1, the father and WW-2, the workman that the workman had left his residence after the demise of his brother and was wandering somewhere and only when he came back to Bombay in 1989 somebody brought to the notice of the workman that an enquiry was conducted in the absence of the workman for his unauthorised absence. In the written arguments filed by the management it is stated that the theory canvassed by the workman that he left Bombay and returned only after one year 10 months when he came to know the enquiry proceedings is not convincing since it is now known how the workman who had left his residence and wandering in places unknown to him returned to Bombay in September, 1989. The explanation of the workman is that on account of the shock he received on seeing the suicide of his elder brother, he lost his mental condition and was doing acts without knowing the consequences of the same. Therefore, it cannot be stated that the version of the workman is to be rejected only because of his failure to explain as to how he eturned to Bombay after one year 10 months. It may be noted that in 1989 the workman has produced the medical certificate from the Doctor of KEM Hospital. It is to the effect that the workman was taking treatment in the KEM hospital. Even though this certificate would show that even though the workman was taking treatment in 1989 he was not well during the period earlier to his obtaining certificate. The failure of the workman to produce medical certificate for the period he was actually absent cannot be considered to be a fatal one, in the present case, since it is the specific case of the workman that he was doing acts without knowing the consequences of the same and he does not know what he was doing, where he was going etc. Therefore, the absence of the workman during the period in question can only be on account of the sickness, the workman was suffering mentally. His failure to produce medical certificate for the relevant period was only on account of his inability to know the consequences of his unauthorised absence. It is held in the decision reported in 1998 (79) FLR page 777 between Employers, management of Pandaveswar Colliery of Eastern Coal Fields Ltd. and Union of India and others that it could not be assumed that the workman who became insane intended to abandon service and that the workman remained absent because she became insane and therefore, the question of abandonment of service could not arise. When we approach the case on hand in the light of the above decision and the reference is also considered it would show that it is not a case of voluntarily unauthorised absence committed by the workman. The reference itself is to the effect whether the termination of the workman after holding him guilty of misconduct of absence when he was under treatment for psychologenic amnesia is just, proper and legal. The reference itself shows that the workman was under treatment for psychologenic amnesia when the entire proceedings were held against him for habitual absence. In those circumstances, it cannot be stated that the termination is just or proper. It is to be noted that the essential basis on which the finding is to be given is to the effect that the enquiry conducted by the management before the industrial tribunal must be fair and just enquiry and in bringing home the workman, the charge framed against him. Principle of natural justice must be observed and normally evidence on its charges sought to be proved must be lead at such an enquiry in the presence of the workman concerned. In the case on hand exparte enquiry has been held and the dismissal order has been passed on the basis of the finding of the Enquiry Officer. In the enquiry before the tribunal it is seen that the workman was suffering from mental disease on account of witnessing his brother committing suicide by pouring kerosene and setting himself on fire which resulted in the conduct of the workman doing things, the consequence of which he is unable to realise. Therefore, termination of the workman from service cannot be justified. The workman is no doubt entitled to an order of reinstatement but the fact remains that it has not been brought to the notice of the management that the workman was suffering from mental illness either by his father or wife and his absence has remained unauthorised one. Consequent upon the dispute raised by him only the workman has shown that he could not attend to his work on account of his own conduct, in getting a shock and remaining absent. Therefore, the management cannot be mulcted with back wages to the workman for the period in which his services were not available to the management on account of his own conduct. In that view I hold on the point that the termination of the services of Mr. D. B. Naik is not justified and he is entitled to an order of reinstatement with continuity of service, but without back wages on the principle of 'No work No Pay'.

7. In the result, an Award is passed as follows : Termination of service of Shri D. B. Naik is neither justified nor proper and therefore, he is entitled to an order of reinstatement with continuity of service but without back wages.

C. V. GOVARDHAN, Presiding Officer.

नई दिल्ली, 14 जुलाई, 1999

का.आ. 2302.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार विभाग के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, चेन्नई, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-7-99 को प्राप्त हुआ था।

[सं. एल.-40012/214/95-आई.आर. (डी.यू.)]
कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 14th July, 1999

S.O. 2302.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Chennai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Deptt. of Telecom and their workman, which was received by the Central Government on the 14-7-99.

[No. L-40012/214/95-IR(DU)]
K. R. VERMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, CHENNAI

Wednesday, the 3rd Day of March, 1999

PRESENT:

Thiru S. Ashok Kumar, M.Sc. B.L.
Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 56 OF 1997

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the management of Deptt. of Telecommunications, Thanjavur-613001).

BETWEEN :

Shree M. Arumugam,
26, Pambalamman Koil Street,
Nidamangalam

AND

The General Manager,
Deptt. of Telecommunications,
Thanjavur-613001.

REFERENCE :

Present : Order (No. L-40012/214/95-IR(DU) dated 23-7-97 Ministry of Labour/Shram Mantralaya, Govt. of India, New Delhi.

This dispute coming on this day for final disposal upon persuing the reference and the connected papers on record and the Workman being absent, this Tribunal passed the following :

AWARD

This reference has been made for adjudication of the following issue :

"Whether the action of the General Manager, Deptt. of Telecommunications, Thanjavur in terminating the services of Shri. M. Arumugam, casual labour w.e.f. 21-11-92 is proper, legal & justified ? If not, to what relief the workman is entitled ?"

Petitioner served. Petitioner called absent. Dismissed for default.

Dated, this the 3rd day of March, 1999.

S. ASHOK KUMAR, Industrial Tribunal.

नई दिल्ली, 14 जुलाई, 1999

का.आ. 2303 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिन्टेन्डेन्ट ऑफ पोस्ट आफिसेस, तुम्कुर के प्रबन्ध-तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलौर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 14-7-99 को प्राप्त हुआ था।

[सं. एल.-40012/35/92-आई.आर. (डी.यू.)]
कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 14th July, 1999

S.O. 2303.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Supdt. of Post Offices, Tumkur and their workman, which was received by the Central Government on 14-7-99.

[No. L-40012|35|92-IR(DU)]
K. R. VERMA, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated, 7th July, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C.R. No. 7|93

I PARTY :

Sri T. R. Devarajaiah,
Tavarekere Post Office,
A. W. Honnudike,
Tumkur District.

II PARTY :

The Director of Postal Services,
Office of the Post Master General,
Bangalore.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2A of Sec. 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-40012|35|92-IRDU dated 18-1-1993 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the Supdt. of Post Offices, Tumkur in dismissing Sri T. R. Devaraiah,

an Extra-Departmental Branch Post Master from service w.e.f. 14-2-89 is legal and justified ? If not, to what relief the workman is entitled to ?"

2. The I Party workman was appointed as E.D.B.P.M. w.e.f. 5-5-80. He was assigned to do his work at Honnuduki Post Office at Tumkur District. He was found having committed mis-conduct violating the provisions of Rule 144 read with Rule 131(3) as he has failed to maintain absolute integrity as required by Rule 17 of Postal and Telegraphs E. D. Agents (C and S) Rules, 1964. Therefore, a domestic enquiry was conducted and on the proved fact he was dismissed from service by the Disciplinary Authority. The charges are made under three headings.

3. The I charge was that he has accepted from depositor of S. B. Account, an aggregating sum of Rs. 990 on various dates for depositing into the account, but he has failed to enter them on the date of receipt of the amounts or subsequently. The II charge was that he has accepted Rs. 280 being instalments for 13 months from the depositor of R. D. account along with the pass-book, but, he has failed to enter the date in the pass-book and in the records of the post-office. The III charge was that he has accepted Rs. 200 on 14-4-87 from the depositor of A|c No. 519875 and entered it in the pass-book, but, failed to enter the deposit in the other records and also to account for the same in the accounts either on the date of deposit or subsequently.

4. The Enquiry Officer after examining no. of witnesses including the affected depositors gave his finding on all the three charges In his findings he held charge No. I and III as proved and charge No. II as not proved.

5. Initially, we have framed a preliminary issue to give a finding on the domestic enquiry. After appreciating the evidence placed by the E. O. and the workman, this Tribunal gave a finding on 7-6-99 in favour of the management.

6. The Learned Advocate for the I Party filed a written argument in support of the contentions raised by him as it regards to merits of this case. According to the Learned Advocate, the findings of the Enquiry Officer is perverse and it is not based on the evidence adduced in the domestic enquiry.

7. I have carefully gone through the entire records maintained in connection with this dispute by the II Party. Initially, the II Party conducted the domestic enquiry in accordance with the rules and necessary opportunity was given to the I Party. Infact, all the witnesses were allowed to cross-examine which has been done by the workman's representative. I am not able to find any deviation made by the Enquiry Officer while giving his report to the legal evidence available on record. In fact the I Party in his statement dated 5-5-87 has stated that he has utilised total amount of Rs. 990 for his personal use in respect of S. B. A|c No. 518987 and as he was unable to pay Rs. 1,000 to Smt. Jayamma on 30-4-87 he retained the pass-book and S. B. withdrawal form sent through EDMC|DP. He has further stated that though he has utilised the amount of Rs. 990 from her S. B. A|c on the aforesaid dates, he personally paid Rs. 1,000 to Smt. Jayamma on 5-5-87 without any transaction passing through post-office. Thus, he submitted the non-accounting of total sum of Rs. 990 in respect of S. B. A|c of Smt. Jayamma.

8. The above fact is sufficient to hold that the conduct of this workman amounts to failure to maintain absolute integrity.

9. The next submission of the learned advocate for the I Party is that the Disciplinary Authority has deviated as it relates to charge No. II as proved though the enquiry officer held as not proved.

10. I am not able to substantiate the contention of the learned advocate as he has not pointed any document that while imposing the punishment of dismissal the Disciplinary Authority has deviated his findings on charge No. II. There is no doubt that if such, deviation is made, an opportunity is required to be given to the concerned workman as the Law emanciated in Punjab National Bank and others and Kunj Bihari Mishra and others in 1998-2 L.L.J. 809 (SC).

11. Since this Tribunal gave a finding on the validity of domestic enquiry as fair and proper and also the I Party failed to establish that the findings of the E. O. is perverse and also in the absence of prooving victimisation and unfair labour practice, there is absolutely no scope to interfere with the orders of the II Party The punishment imposed cannot be held to be dis-proportionate or it shocks the conscience of the Court as dis-proportionate.

12. Having regard to these facts and circumstances, the II Party are justified in dismissing the services of this workman on proved mis-conduct. The reference is answered accordingly.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 14 जुलाई, 1999

का.आ. 2304 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार विभाग के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापत्तनम् के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-7-99 को प्राप्त हुआ था।

[सं. एल.-40012/4/97-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 14th July, 1999

S.O. 2304.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Visakhapatnam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of D/o Telecom and their workmen, which was received by the Central Government on 14-7-99.

[No. L-40012/4/97-IR(DU)]

K. R. VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, VISAKHAPATNAM

PRESENT :

Sri C. Sambasiva Rao, M.A., B.L., Chairman and Presiding Officer.

Friday, the 4th day of June, 1999

I.T.I.D. (C) 12/98

Reference No. L-40012/4/97-IRDU dated 10-3-98

BETWEEN

D. Surya Rao, Lift Man,

Through :

The District Secretary,
All India Telecom Employees Union,
Line Staff and Group-D,
C/o Telecom District Engineer,
Vizianagaram-531202. ..Workman.

AND

General Manager,
Telecom Area,
Near Sampath Vinayaka Temple,
Siripuram, Visakhapatnam-530003. ..Management

This petition filed for hearing before me in the presence of Sri C. Suryanarayana and Sri Y. Subrahmanyam, Advocates for workman and the management in person but since the petition is not pressed by workman the court passed the following :

AWARD

Since not pressed by workman by making endorsement Nil Award is passed.

Given under my hand and seal of the court this the 4th day of June, 1999.

C. SAMBASIVA RAO, Presiding Officer

नई दिल्ली, 20 जुलाई, 1999

का.आ. 2305.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सब-डिवीजनल आफिसर टेलीग्राफस करवार के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-99 को प्राप्त हुआ था ।

[सं. एल-40012/134/93-आई आर(डीयू),
एल-40012/153/93-आई.आर. (डीयू)]
कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 20th July, 1999

S.O. 2305.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sub-Divisional Officer, Telegraphs, Karwar and their workmen which was received by the Central Government on 20-7-99.

[No. L-40012/134/93-IR(DU),
L-40012/153/93-IR(DU)]
K. R. VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Bangalore, the 6th July, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 83/1994

I PARTY

Shri B. A. Naik,
At : Habbuwada,
Shri V. B. Gaonkar Compound,
Karwar-581301.

II PARTY

The Sub-Divisional Officer,
Telegraphs,
Karwar-581301.

The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-40012/134/93-IR(DU) dated 3-10-1994 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Sub-Divisional Officer, Telegraphs, Karwar in terminating the services of Shri B. A. Naik, Casual Mazdoor w.e.f. 27th October, 1987 is proper, legal and justified ? If not, to what relief the workman concerned is entitled ?"

C. R. No. 84/1994

I PARTY

Shri Chandrahas V.,
Kankonkar, P.O. Shejwar,
At : Shirward,
Karwar-581301.

II PARTY

The Sub-Divisional Officer,
Telegraphs,
Karwar-581301.

The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-40012/153/93-IR(DU) dated 3-10-1994 for adjudication on the following schedule :

SCHEDULE

"Whether the termination of the services of Shri Chandrahas V. Kankonkar, Casual Mazdoor by the Sub-Divisional Officer, Telegraphs, Karwar w.e.f. 1-8-87 is proper, legal and justified ? If not, to what relief the workman concerned is entitled ?"

COMMON—AWARD

3. The common question involved in the above disputes are the justification of termination said to have been made by second party on 27-10-1987 and 1-8-1987 respectively.

4. The Claim Statements of the above workmen is in a way identical except their tenure of work.

5. The first party in C.R. 83/94 has contended that he was appointed as a Mazdoor on 8-4-1985 and worked upto 26th October, 1987. It is his further contention that his services are discontinued on the ground that General Manager Telecommunication directed the Local Officer to stop fresh recruitment of Casual Mazdoor after 30-3-1985 vide Ref. REF/2-43/DLG/4 dated 1-6-1987.

6. His further contention is that without complying to the Mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 the termination of his employment is

violated when the act of the second party amounts to retrenchment. Therefore he prayed for re-instatement, back wages and other benefits.

7. The workman in C. R. No. 84/94 in similar contention said that he was joined on 15-9-1984 and he has worked upto 31-7-1987. His termination also similar to the workman in C.R. 83/94. He has also contended violation of Section 25F and therefore he is entitled for all the reliefs similarly claimed by the workman in C.R. 83/94.

8. The second party filed their written statement in each case. In the first dispute they have not disputed that the workman worked from 8-4-1985 to 26-10-1987. They have also not disputed as per the instruction of General Manager the services of the first party was dispensed with since he had entered after 30-3-1985 which according to them is a cut-off date.

9. It is further contended, this fact was orally initmated to the workman. They have denied that the workman worked continuously for the period claimed by him. They have justified their action as they were unable to re-absorption and continuance of employment though requested by the workman in view of the directions in the circular mentioned. Therefore they prayed for rejecting the reference.

10. In CR 84/94 the identical defence have taken with some variations. The variations are that this workman's claim of continuous service is not correct. According to them this workman joined as a Casual Mazdoor on 15-9-84 (error) after working only for 60 days. He remains absent from work till January 1986. Their further contention is that this workman worked from Februarv 1986 to July 1987 and thereafter he remained absent and therefore there is no question of any termination.

11. It is further contended that on 26-6-1986 this workman represented vide letter 27-6-1988 that he was ill and also produced medical certificate. However the second party informed vide letter PCM 77/3 dated 5-7-1988 that he would not be absorbed in view of that circular. They have also denied the continuity of work from 15-9-1994 to July 1997. They have also denied that the contention that the Juniors were retained and these workmen were sent out. In fact to a representation of this workman a suitable reply was given explaining why he could not be absorbed.

12. Since there was no scope for framing any additional issues the second party was directed to justify their action and both the workmen can give their evidence in support of their contention.

13. In CR 83/94 a Sub-Divisional Officer was examined as MW-1. He has stated in his evidence that this workman worked from 8-4-1985 to 20-6-1987. But the work was intermittant. He has also produced Ex. M-1 to evidence this fact which was a communication sent by Telecom District Engineer, Karwar. In Ex. M-1, the necessary instructions were also given with regard to the dispensation of service of Casual Mazdoor engaged after 13-3-1985. He has further stated that the first party was engaged from 8-4-1985. By following the instructions in Ex. M-1 he was terminated. He has also stated that no Casual Mazdoor were regularised or to have been appointed after 30-3-1985. He has also given an identical evidence in CR 84/94 with some variations. Here he has deposed that this workman worked as Casual Mazdoor w.e.f. 15-9-1994 and he has worked only 60 days during September and thereafter he has remained absent. He has once again came during February 1985 and worked continuously upto October 1986. He has relaid on Ex. M-1 a letter similar to the documents marked in the earlier case. His further evidence is that this workman was not terminated. He has referred to the representation and non-consideration by the department.

14. In the cross-examination it is elicited that the department has issued service card to this workman where the period worked was mentioned. He has justified the termination of the workman in C.R. 83/94. As it regards to C.R. 84/94 it is his evidence that the workman has continuously remained absent until he gave a representation on 27-6-1988.

15. The workman have left their evidence in support of their contentions. The party in CR. 83/94 has reiterated the averments made in the petition in the evidence. According to him that he was refused employment from 27-10-1987 as per Ex. W-6. This refusal was a oral one. He further spoke about the request letter dated 25-11-1987 and a reply received to it Ex.-W-7. His further evidence is that he has worked more than 240 days in a year, therefore this termination is illegal.

16. The workman in CR. 84/94 has raised simliar contention and lastly contended that he has also worked more than 240 days at the time of his removal.

17. The Learned Advocate for the workman has filed written arguments in both cases. The specific case is that both the workmen have worked continuously for more than 240 days in a year and therefore the second party ignored the provisions contained in Chapter V of the Industrial Disputes Act, therefore their services are terminated or dispensed with as contended by the second party.

18. Against this submission the contention of the learned Advocate for the second party is that they are Casual Mazdoors therefore no notice of termination is necessary and he has further submitted that there is no obligation to comply the mandatory provisions contained in Section 25F. He has also contended that the Telegraph Department is not an industry.

19. As it regards to the question that the Telegraph Department is an Industry, the Judgment of Hon'ble Supreme Court reported in AIR 1995 SC 636 between Central Manager, Telegraphs Vs. S. Srinivasa Rao and others, has concluded that commercial activity involved in the telegraph department amounts to an Industrial activity. Therefore this question does not require any independent opinion.

20. Ex. M-1 in both disputes shows the number of working days of these workmen. If we persue Ex. M-1 in both cases it is conclusively proved that these workmen have worked more than 240 days in a year. We describe the year, is not commencing from January to December but a year followed by 12 months continuously even from middle of a year to the next middle, of the year. It is proved that they have continuously worked for more than 240 days in a given year. A temporary absent are temporarily cessation of work for few days cannot be viewed as intermittent work. The number of days worked in each month shall be computed for a period of 12 months of the next calendar month. Under Section 25F the Management shall fulfil certain conditions before removal of a person. For convenience Section 25F is reproduced below :

> 25F. Conditions precedent to retrenchment of workmen—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice ;
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (1) for every completed year of continuous service) or any party thereof in excess of six months, and
>
> (c) notice in the prescribed manner is served on the appropriate government 2 (for such authority as may be specified by the appropriate government by notification in the Official Gazette).

21. The conditions shows above shall be simultaneous and non-performance of the above conditions renders a termination as nullity and it amounts to retrenchment."

22. The consistant case made out by second party is that the termination of employment was due to the circular referred at Supra. The benefit of absorption were not extended to this workman as according to the second party the

cut-off date is 30-3-1985. But the second party not shown as to how these circulars will take away the right conferred to a workman under the Industrial Disputes Act. These circulars may be issued for proper administration of the establishment and also to cut-off any unnecessary expenses. But the circular cannot give right to ignore the provisions of an act duly enacted by the Parliament.

23. Since the second party failed to comply the mandatory provisions contained under Section 25F, the termination of these two workmen is legally un-sustainable.

24. It is submitted that many of the Casual Mazdoors were absorbed but this benefit was deprived to the workmen because they have joined after 30-3-1985.

25. Though it can be said that the question of absorption would have been kept open as and when there was scope for absorption but such method was not adopted. Therefore the workman who has joined the second party to eke out his livelihood will expect a treatment which was extended to some of his co-workmen. If the second party resorted to retrench this workman in accordance with law there could not have been arised a situation as this.

26. In view of the facts and circumstances discussed above the termination of this workman from the dates mentioned in the schedule are not justified. They are entitled for re-instatement to a suitable job with continuity of service.

27. As regards to payment of back wages the second party shall not be burdened to pay the full back wages as its calculations is difficult in view of the fact so many changes that took place from 1987 onwards. These workman have raised this Industrial Dispute after lapse of 7½ years from the date of alleged termination and therefore the second party are directed to pay a sum of Rs. 50,000 each as compensation due to deprevation of their rights to continue in the second party.

The reference is answered accordingly.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 23 जुलाई, 1999

का.आ. 2306.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट आफ पोस्ट आफिस, दुर्ग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-99 को प्राप्त हुआ था।

[सं. एल-40012/32/89-डी II (बी)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 23rd July, 1999

S.O. 2306.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sr. Supdt. of Post Office, Durg and their workman, which was received by the Central Government on the 23-7-99.

[No. L-40012/32/89-D. II(B)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

PRESIDING OFFICER : SHRI D.N. DIXIT

Case No. CGIT/LC/R/233/89

BETWEEN :

Senior Superintendent of Post Office,
Durg Division,
Civic Centre, Bhilai,
Distt. Durg,
Madhya Pradesh .. Management.

Vs.

Smt. Sukhbati,
W/o. Shri Sivram Yadav,
Behind Post Office,
Hamal Para,
Ward No. 18,
Rajnandgaon (MP). ... Workman.

AWARD

Delivered on this 22nd day of May 1999

1. The Government of India, Ministry of Labour vide its order No. L-40012/32/89-D.II(B) dt. 23-10-89 has referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management as Sr. Supdt. of Post Office Durg Division, Civic Centre, Bhilai in relation to their Rajnandagaon Post Office in terminating the services of Smt. Sukhbati Bai, Part time Sweeper w.e.f. 4-4-88 and not considering her for re-employment is justified ? If not to what relief is the workman entitled to ?"

2. The contention of workman Smt. Sukhbati W/o. Sivram Yadav is that she was appointed in 1964 for the job of cleaning the post office at Rajnandgaon. She performed her duties regularly. Later on she was appointed as regular mazdoor. She did her work carefully. By order dt. 4-4-88 the services of the workman have been terminated on the ground that her work was not satisfactory. While termination of job the workman has not been given one month's notice or pay in lieu of and retrenchment compansation. This order of the management dt. 4-4-88 is illegal and invalid. The workman wants that she be reinstated with back wages and all consequential benefits.

3. Contention of the management is that the workman was employed to clean the compound of the Post Office on fixed amount. This amount was revised from time to time. The workman was not doing her job satisfactorily. The appointment of the workman was on contract basis and notice of termination was not required. She was not entitled to retrenchment compansation. The workman is neither entitled for retrenchment notice nor back wages as claimed by her. Management wants the present case to be dismissed with costs.

4. The workman has not filed any document in support of her contention. The workman has filed

her affidavit and has been cross-examined on it. The management has not examined any witnesses.

5. The burden of proving that she was working as a regular mazdoor is on the workman. The workman was never appointed as a regular mazdoor. No document has been filed by the workman to prove that she was appointed as a regular mazdoor. The order of termination has been filed by the workman. This order does not show that the workman was a regular employee of the management. The statement of workman is not supported by documentary evidence.

6. Retrenchment notice and compensation are essential only for regular employee. For casual employee or for employees on the contract basis, the notice and retrenchment compensation are not essential. In the present case, there was no need for the management to give notice of retrenchment to the workman, Workman can not get retrenchment compensation.

7. The award is given against workman. Parties to bear their own costs.

8. Copies of the award be sent to Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 23 जुलाई, 1999

का.आ. 2307:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैं. दी असिसटेंट इंजीनियर सी.सी.पी. हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, नं. 1, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-99 को प्राप्त हुआ था।

[सं. एल-40012/126/97-आई.आर. (डीयू)]
कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 23rd July, 1999

S.O. 2307.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, No. I, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s The Asst. Engineer, CCP Hyderabad and their workman, which was received by the Central Government on 23-7-1999.

[No. L-40012/126/97-IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri. C. V. Raghavaiah, B.Sc., B.L.,
Industrial Tribunal-I

Dated : 25th Day of June, 1999

INDUSTRIAL DISPUTE NO. 11 OF 1998

BETWEEN

Sri P. Nageswara Rao C/o Sh. C. Suryanarayana, 1-2-593/50, Sri Sri Marg, Srinilayam, Gaganmahal, HYDERABAD-29 Petitioner

AND

1. The Asst. Engineer, CCP, 3rd Floor, Telephone Bhavan, Hyderabad-500004.

2. The General Manager, Telecom, Guntur-522 002 .. Respondents

APPEARANCES :

Sri C. Suryanarayana, Advocate for the petitioner
Sri P. Damodar Reddy, Addl. Standing Counsel for Central Government for respondents.

AWARD

The Government of India, Ministry of Labour, New Delhi by its order dated : 18-6-1998 in No. L-40012/126/97-IR (DU) made this reference under Section 10(1)(d) and sub-Section (2A) of Industrial Disputes Act, 1947 (Act 14 of 1947) to this Tribunal for adjudication of the following Industrial Dispute :

"Whether the action of the Management of M/s. The Asst. Engineer, CCP Hyderabad in terminating the services of Sri P. Nageswara Rao is legal and justified ? If not, to what relief the workman is entitled to ?"

The above reference was taken on file as I.D. No. 11/98. On being served with notice, both parties made their appearance through counsel and filed their respective pleadings.

2. The case of the petitioner/workman as per the claim statement filed by him in brief is as follows : The petitioner belongs to Scheduled Caste. He registered his name with employment Exchange Office Guntur on 13-7-1983 vide Registration No. F1/83/06499. He was employed on 5-12-1984 vide Certificate No. CX-CD/SFD/4 issued by the 1st respondent. He was in continuous service ever since and conferred the temporary status with effect from 1-10-1989 vide Order No. 269-10/89-STN Dt : 7-11-1989, pursuant to the order of the Hon'ble Supreme Court and vide Memo No. E. 25/CM/Temp. Status/III/2 dt. Nil-8-90 of Telecom Distt. Manager Guntur. He was employed for 27 days in Dec. 1984, for 365 days each in the year 1985 to 87, for 350 days during the year 1988 and for 363 days during 1989. He was employed for 385 days in 1990 and for 140 days upto 20-5-91 i.e. from 1-1-1990 to 20-5-91.

It is the further case of the petitioner that there after he fell sick, left to his father-in-law's house at Ponnur for treatment and informed the said fact to the Asst. Engineer, Telecom CCP Hyderabad and also about his inability to attend to duty due to sickness. After taking treatment for 4 months, he reported to the Asst. Engineer to resume duty but not permitted though his juniors were continued. His repeated efforts to resume duty did not fructify in view of the refusal of the above authority to permit him to join the duty. Thus he was retrenched from service without complying with the provisions of Section 25-F of I.D. Act which is void. Further the respondents did not comply with the order dt. 7-11-89 of D.O.T. before retrenching him from service. Thereafter he raised the industrial dispute before Regional Labour Comissioner (Central) Hyderabad. Inspite of issuing notices repeatedly the respondents did not attend the conciliation proceedings. Hence the conciliation Officer sent failure report on 17-4-97 leading to this reference.

The petitioner thus prayed that reference may be answered in his favour by holding that the action of the 1st respondent constitute retrenchment which is ab initio void and the inaction of the 2nd respondent against such illegal retrenchment of casual mazdoor on whom temporary status was conferred amounts to collusion and to direct the respondents to reinstate the petitioner into service with back wages and continuity of service and other attendant benefits to which he is entitled

3. The respondents filed counter contending as follows : It contended that the reference is not maintainable as the

respondent department is not an industry and the matter is subjudice. Coming to the merits of the case according to the respondents the petitioner voluntarily left the place of duty on 20-5-91 on completion of work and did not report for duty thereafter as such it is case of abandonment but not termination. As the petitioner did not turn up for duty subsequent to 20th May, 1991 the officer in-charge sent letter on 19th June, 1991 to his address ordering him to explain for abstaining from duty and as to why disciplinary action should not be taken. But the same was returned unserved by the postal authorities on 2nd July, 1991 with endorsement "Whereabout of the addresses not known". Similarly the money order sent to the petitioner on 14th June, 1991 for Rs. 806 being the wages for May, 1991 was returned back undelivered. But 2 years thereafter i.e. on 22nd April, 1993 the petitioner sent representation that due to ill health he was not available at his residence from May, 1991 and hence he could not receive the wages and bonus sent by Money order and requested the in-charge officer to send the same. Again on 26th June, 1993 he sent another letter for sending the above dues and thereafter he did not make any correspondence and he never expressed his willingness for re-employment. According to the respondent though the petitioner was conferred temporary status, his service automatically stands terminated once he leaves the service as his engagement was on daily rates and on need basis.

It further contended that it did not participate in the conciliation proceedings as its department was declared as not an Industry' by the Hon'ble Supreme Court as such I.D. Act is not applicable and it informed the said fact to the conciliation Officer further according to it D.O.T. order dated 7th November, 1989 is not attracted as it is not a case of misconduct but desertion of service by the petitioner whose whereabouts are not known for about 2 years. It also contended that petitioner came up with false case by way of after thought to gain employment through back door having abandoned it for his own reason and kept quiet for 6 years without seeking reemployment having been gainfully employed elsewhere. It contended that the fact that petitioner did not seek re-employment in his letter dated 22nd April, 1993, 21st June, 1993 but approached the Labour Commissioner for the first time on 20th June, 1996, would show that by way of after thought he is seeking re-employment with mala fide intention. It denied that petitioner fell sick and hence could not attend to duty from 25th May, 1991, that he was taking treatment in his father-in-law's house and that he sent letter to the above effect to the 1st respondent and contended that above facts are concocted for the purpose of the case and to explain his absence.

It thus contended that having obtained gainful and profitable employment else where in May 1991 the petitioner deserted the service of the respondent and kept quiet for 5 years without indicating that he is willing for employment in the letter dated 22nd April, 1993 and 26th June, 1993 and it is willing to adduce evidence to justify its action at the time of enquiry. It also contended that due to modernisation of the respondent Department the man power requirement is very much reduced, that there is ban on recruitment and the respondents are willing to continue those who are sincere and service oriented but not person of the type of petitioner who by his long absence proved to be unfit to work in Telecom Department and the post of the 1st respondent is redesignated as Sub Divisional Engineer and his office is located at Sanathnagar, Hyderabad and hence particulars of Respondent No. 1 has to be corrected. It also contended that petitioner did not approach this Tribunal with clean hands as he suppressed material facts.

The respondents thus prayed that reference may be answered by holding that petitioner is not entitled to any of the reliefs prayed for

4. On the above contentions, the following points arise for consideration :

1. Whether the petitioner has left the service from May, 1991 on his own accord if so, it is not case of termination of service amounting to retrenchment ?

2. If it is a case of retrenchment of the petitioner from service, the same is illegal for not following the provisions of Section 25-F of I.D. Act and D.O.T. letter dated 7th November, 1989 ?

3. To what relief ? If any the petitioner is entitled in case it is held to be a case of illegal retrenchment ?

No point is framed on the question whether the respondent is an Industry as the case law on the point is well settled decision in 1996 FLR P 690 sub-divisional Inspector of Post Vaikam Vs. T. Jojesh.

5. In support of his contention the petitioner workman examined himself as WW1 and filed Ex. W1 to W12. On behalf of the respondent one Sri Subba Rao the Sub Divisional Engineer Co-Axial Cable project Hyderabad was examined as MW1 and he filed Ex. M1 to M6.

6. Points Nos. 1 & 2.—The petitioner workmen is seeking reinstatement on the ground that he is terminated from service without following the provisions of Sec. 25F of I.D. Act as well as D.O.T. Order dt. 25-11-89.

7. The admitted facts as revealed from the oral and documentary evidence placed on record by the parties briefly are as follows : The petitioner studied upto X Class. He belongs to Schedule Caste to be precise he is 'Mala' by cast as borne out by Ex. W1 Caste Certificate dt. 27-6-89 issued by the Tehesildar Tenali. He registered his name in the employment exchange office Guntur. On 13-7-89 as borne out by Ex. W2 xerox copy of the employment card. He was recruited as employed as casual Mazdoor by the Asst. Engineer Co-Axial Cable project Hyd. on 5-12-84 and being employed beyond 16 KMs. from the nearest employment exchange as borne out by Ex. W3 order. He was in continuous employment from 5-12-84 to 20-5-91 as borne out by Ex. W4 certificate from the year 84 to 89 and Ex. W5 certificate for the year 1991. As per Ex. W4 he worked for 27 days in the year 1984, 365 days in the years 1985 to 1987, 350 days in 1988 and 363 days in 1989. As per Ex. W5 he was employed for 358 days in 1990 and 140 days in the year 1991. Pursuant to the decision of Hon'ble Supreme Court reported in AIR 1987 SCC 2342 and Ex. W12 letter or circular dt. 7-11-89 on the subject of conferment of temporary status, the petitioner was conferred temporary status vide Ex. W6 order dt. Nil-8-90 of Divl. Engineer (Admn. & Plg.) I/C T.D.M. Guntur. The petitioner did not report to duty subsequent to 20-5-91.

8. The Asst. Engineer Telecom Coaxial Cable Project sent Ex. M4 letter dt. 19-6-91 to the petitioner's address i.e. Varahapuram Tenali by registered post for his unauthorised absence without permission and seeking his explanation for taking disciplinary action. It was however returned unserved with endorsement that the where abouts of addresses not known as borne out by Ex. M5 returned postal cover. Thereafter the respondent said to have sent wages for the month of May and bonus of 1990-91 by M.O. but returned undelivered. The petitioner sent Ex. M1 letter dt. 2-4-93 to the Asst. Engineer CCP Hyderabad stating that due to sickness he could not attend to duty from May 91 that he could not receive M.O. sent towards wages of May 91 and bonus for the year 90-91 as he was not available at his house and hence the same may be sent. On receipt of the said letter the Asst. Engineer addressed Ex. W7 letter dtd. 26-4-93 which is same as Ex. M6 to the Divisional Engineer to arrange for payment of the said dues. The petitioner sent Ex. M2 reminder dtd. 26-4-93 to arrange for the payment of his dues. Thereupon the Divisional Engineer Addressed Ex. W8 letter dtd. Nil-7-93 to the accounts officer to pay the dues. Eventually the petitioner was paid the above dues later as per respondent but denied by the petitioner.

9. After lapse of about 2 years thereafter the petitioner raised industrial dispute before the Regional Labour Commissioner (Central) Hyderabad by giving Ex. W9 representation dtd. 26-6-94. The above conciliation officer sent Ex. M3 notice to both parties for their appearance on 9-8-96 before him and for filing written comments. The management that is respondent did not participate in the proceedings on the ground that its department is not an industry as such ID Act is not applicable. Ex. W10 is minutes of

proceedings dtd. 17-4-97 as per which the petitioner representative requested the conciliation officer to send the report to the Labour Ministry for refering the dispute for adjudication. Accordingly Ex. W11 failure report dtd. 7-11-97 was sent by the Regional Labour Commissioner leading to this reference U/Sec. 10(1)(d) of I.D. Act. The petitioner was not issued 1 month's notice or pay in lieu of notice of retrenchment compansation as per section 25F of I.D. Act no any departmental enquiry held against him for his unauthorised absence without permission from 21-5-91.

10. The learned counsel for the respondent contended that it is a case of abandonment but not termination or retrenchment without following provisions of Section 25F of I.D. Act. It is submitted that petitioners absented from duty from 21-5-91 without applying for leave or permission, that for his absence a notice Ex. M4 was sent to the petitioners residential address but returned unserved as borne out by Ex. M5, that 2 years later the petitioner sent Ex. M1 letter dtd. 22-4-93 and Ex. M2 letter dtd. 26-6-93 for payment of wages till 20-5-91 and bonus for the year 90-91 but did not seek for re-employment, that 3 years later he approached PLC raising this dispute and pursuant to Ex. M1 and 2 letters the Assistant Engineer addressed Divisional Engineer for payment of dues to WW1. He submitted the above circumstance clearly shows that the petitioner is not interested in employment and hence left the same on his own accord but seeking re-employment 5 years later, to enter into service by back door as service of his colleagues who are earlier conferred temporary status as per Ex. W6 order dtd. Aut'90 are regularised. He thus submitted that in case of this type question of complying with section 25F of I.D. Act and following Ex. W12 order dtd. 7-11-89 of D.O.T. does not arise. Thus according to the learned counsel there is no illegal retrenchment to be entitled for reinstatement.

11. The learned counsel for the petitioner on the other hand contended that the service of petitioner was terminated without following Sec. 25 F of I.D. Act and order dated 7-11-89 of D.O.T. He has submitted that petitioner who belongs to Schedule Caste was appointed through employment exchange on 5-12-84 under Ex. W3 certificate, that he worked without any remark till 20-5-91, that he worked for more than 240 days in each year as borne out by Ex. W4 and W5 certificates, that he was conferred temporary status as borne out by Ex. W6, that as he fell sick he could not attend to duty for 4 months subsequent to 20-5-91, that he did not receive any notice from the respondent as he left to his in-law's house at Ponnur, that after he recovered from illness he approached Asstt. Engineer to resume duty but was not permitted to join, that repeated efforts made by him to resume duty did not succeed and he raised dispute before ALC. It is submitted that even Ex. W12 order was not followed as no notice given and enquiry held with regard to alleged misconduct of the petitioner. It is submitted that it is improbable to believe the petitioner abandoned the job having worked continuously from 5th December, 1984 to 20th May, 1991 and having been conferred temporary status. He thus contended that hence refusal to permit the petitioner to resume duty amount to retrenchment within the meaning of Sec. 2(oo) of ID Act and the same is void abinitio for not complying with the provisions of Sec. 25F of I.D. Act as well as Ex. W12 order. In support of above contention reliance is placed on the following decision of Apex Court. Santosh Gupta Vs. State Bank of Patiala AIR 1980 SC 1219 and Punjab Road Development Reclamation Corporation Limited Vs. Presiding officer 1990 (II) LLJ 70.

12. There can be no quarrel with regard to the Principle of law canvased by the learned counsel. There can be no dispute that non admission to service after workman reports to duty before his name was removed from the rolls of Casual Mazdoor amounts to retrenchment within the meaning of Sec 2(oo) of ID Act as it includes termination of service for whatever reason. It can also be again said that if retrenchment is affected without complying with the provisions of Sec. 25 F of I.D. Act it is void abinitio.

13. It is therefore to be seen the version of which party is quiet probable. The workman as WW1 spoke to petitioner averments and MW1 to the averments in the counter. Thus it is a case of Oath against Oath as neither side examined any independent witnesses though both sides adduced documentary evidence. Hence we have to see the conduct of parties and surrounding circumstance. I feel that Ex. W1 to 12 are not of much relevance. Hence we are left with the surrounding circumstances and documentary evidence adduced by the respondent. Admittedly the petitioner did not report for duty from 21-5-91. According to the petitioner he fell sick for 4 months and after recovering from illness he approached Asstt. Engineer to permit him to resume duty but he refused and at the time of leaving to Ponnur he informed Asstt. Engineer before stopping work, that he contated Asstt. Engineer from Ponnur or Tenali and also wrote letter to the Asstt. Engineer about his sickness and mentioned his leave address. The petitioner however did not file any record to show that he was sick for 4 months and hence could not attend to duty from 21-5-91. Further except his bald statement there is no material on record to show that he approached Asstt. Engineer several times to permit him to resume duty after recovering from sickness.

14. Ex. M4 is the show cause notice dated 19-6-91 sent to the petitiner to explain for his absence failing which disciplinary action will be taken. It was sent to petitioner's Tenali Address by registered post but returned unserved as borne out by Ex. M5. If the petitioner informed the Asstt. Engineer about his illness and wrote letter from Ponnur giving his address the authorities would have sent Ex. M4 to Ponnur address Ex. M1 is the letter dated 20-4-93 sent by the petitioner for settlement of wages for the month of May '91 and bonus for the year 1990-91 on the ground that he could not receive money order as he is not available at his residence due to illness. The said letter was sent from Tenali, Ex. M2 is another letter dated 22-6-93 with same request, sent by way of reminder. It was also sent from Tenali address to which Ex. M4 show cause notice was sent. In none of the above letters as rightly pointed but by the learned counsel for the respondent the petitioner sought re-employment or permission to resume duty or expressed desire to rejoin or to sanction leave though they were sent two years after he failed to attend to duty. If the petitioner is really interested in resuming duty and his request for permission was negatived inspite of repeated request, the said fact would have been mentioned in either of the above letters. I am unable to accept the submissions of the learned counsel for the petitioner that there is no need to mention, about willing to join in Ex. M1 and 2 as they are regarding wages and bonus and even if such request is made Asstt. Engineer is not competent to entertain the same as there is no ban for making request for employment in Ex. M1 and M2 simply because the Asstt. Engineer is not competent to entertain the request it cannot be said that the petitioner need not make request for re-employment.

15. Pursuant Ex. M1 letter the Asstt. Engineer addressed Ex. M7 which is same as Ex. W7 letter to Divisional Engineer, to arrange for payment of wages for the month of May 91. Thus for the first time 2 years after 20-5-91, the petitioner addressed Ex. M1 and 2 letters only for payment of bonus and wages for the month of May '91 but not made request for re-employment or expressed desire to rejoin. Nearly 3 years after Ex. M1 and 2 letters the petitioners addressed Ex. W9 representation dated 26-6-96 to RLC No convincing explanation given for the delay in approaching RLC. Thus the conduct of the petitioner shows that he is not interested in reporting to duty but particular to settle his claim. As stated above I am unable to accept the submission of learned counsel that there is no need for the petitioner to make request in Ex. M1 and 2 for re-employment. If he is really interested in the job after recovering from the alleged sickness he could have sent an application to the authority to sanction leave to whichever he is entitled for the period of absence and for permission to join.

16. The above circumstance appearing in the case in my view would lead to irresistive conclusion of abandonment of service as otherwise the petitioner would not have failed to seek for re-employment in Ex. M1 and 2 letters and would not have delayed in approaching the RLC when the respondent refused to permit him to resume duty. This conclusion of mine is fortified by the decision in the case

R. Srinavsava Vs. Industrial Court 1999(82)-FLR P 348 I am of the view that absence of the petitioner from duty without leave and permission for period of 4 or 5 years, would amount to deliberate, will full and unauthorised though the same was not specifically alleged in Ex. M4 show cause notice. I am also of the view that his unauthorised absence amounts to misconduct for which Ex. M4 show cause notice is given but returned unserved I am of the view that in case of abandonment no domestic enquiry need be held as contemplated in Ex. W12 and provisions of Sec. 25 F of I.D. Act need not be complied. I am also of the view that merely because the petitioner worked for not less than 240 days in each year and he was conferred temporary status under Ex. W6 unauthorised absence does not cease to be a case abandonment but amounts retrenchment. In this view of the matter I do not want to go into the question whether the petitioner abandoned service due to gainful employment elsewhere.

16. Hence I conclude from the material placed on the record that unauthorised absence of the petitioner from duty without reasonable cause for more than 4 or 5 years, that the failure on his part to seek employment in Ex. M1 and 2 letters and want on delay in approaching RLC, would only amount to abandonment and it is not a case of retrenchment without following provisions of Sec. 25 F of I D Act or Ex. W12 Order. These points are answered accordingly against the petitioner.

17. POINT No. 3 : In view of my finding on points 1 & 2 I am of the opinion that the petitioner is not entitled to any relief as it is not a case of retrenchment, void abinitio, to be entitled to the relief of reinstatement and other benefits.

Written and passed by me on this the 25th Day of June 1999.

C. V. RAGHAVAIAH, Industrial Tribunal-I

Appendix Evidence

Witness examined for the Petitioner	Witness examined for the respondent.
WW1 : P. Nageswara Rao	MW1 : B. Subba Rao.

Documents marked for the petitioner

Ex. W1 : Xerox copy of the caste certificate dated : 27-6-89 of WW1.

Ex. W2 : Xerox Copy of the Employment Card dated 13-7-83 issued to WW1.

Ex. W3 : Certificate dated : 5-12-84 given by A.E. Telecom Co. Axial Cable 1.

Ex. W4 : Warning day of Particulars dated : 5-12-84 to 31-12-89 statement (xerox copy).

Ex. W5 : Warning days particulars of WW1 1-1-90 to 20-5-91.

Ex. W6 : Order of Divisional Engineer (Adn. and Plg.) T.D.M. Guntur granting Temporary status scheme to WW2 w.e.f. 1-10-89.

Ex. W7 : Xerox Copy of the letter dated : 26-4-93 addressed to the Asst. Engineer Tlecon Co-axial dept. Hyd. and to the Divisional Engineer co-axial projects Hyd. issued payments due to WW1.

Ex. W8 : Xerox Copy dated : Nil-07-93 of the Divisional Engineer to the Account officer G.M. Telecom Hyd. issued payments due to WW1.

Ex. W9 : Copy of the representation made to RLC(C) Hyd. by WW1.

Ex. W10 : Xerox copy of the minutes of conciliate proceedings held on 17-4-97 and the RLC Hyd.

Ex. W7 : Xerox Copy of the letter dated : 26-4-93 addressed submitted by AICC(C) Hyd by WW1.

Ex. W12 : Copy of the D. G. Telecom order dated : 7-11-90 regarding grant of temporary status and regularisation scheme in Telecom Department.

Documents marked for the respondent

Ex. M1 : Xerox copy of the representation dated 22-4-93 fi sent by WW1 addressed to the Asstt. Engineer CCP Hyd.

Ex. M2 : Inland letter dated : 26-6-93 written by WW1 claiming unpaid benefits address to Asstt. Engineer CCP Hyd.

Ex. M3 : Notice given by AICC (C)-I Hyderabad to management and WW1 for conciliation meeting.

Ex. M4 : Letter dated : 19-6-91 addressed to the WW1 by the Asstt. Engineer Telecommunication Co-axial cable project.

Ex. M5 : Returned postal cover addressed to WW1.

Ex. M6 : Letter dated : 26-4-93 addressed by the A.E. Telecom to the Divisional Engineer Co. axial cable project for payment of dues to Sri P. Nageswara Rao.

नई दिल्ली, 23 जुलाई, 1999

का.आ. 2308.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रीजनल बायो-फर्टीलाईजर डेवलपमेंट सेंटर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-99 को प्राप्त हुआ था ।

[सं. एल-42012/109/95-आई.आर. (डीयू)]
कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 23rd July, 1999

S.O. 2308.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Regional Bio-Fertilizer Development Centre and their workman, which was received by the Central Government on the 23-7-99.

[No. L-42012/109/95-IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

PRESIDING OFFICER SHRI D.N DIXIT

CASE NO. CGIT/LC/R/169/96.

BETWEEN :

Regional Director
Regional Bio-Fertilizer Development Centre,
213, Ravindranagar,
Adharthal,
Jabalpur (MP) ... Management.

Vs.

Shri Rajesh Sharma,
S/o Shri Kaushalkishore Sharma,
H. No. 1645,
Futsthal, Near Geetha Sadan,
Jabalpur (MP) ... Workman.

AWARD

Delivered on 28th day of May 1999

1. Ministry of Labour, Government of India vide its order No. L-42012|109|95-IR(DU) dt. 28-8-96 has referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of Regional Bio-Fertilizer Development Centtre, Jabalpur in terminating the services of Shri Rajesh Sharma, S|o Shri Kaushal Kishore Sharma is legal and justified ? If not, to what relief the workman is entitled to ?"

2. The contention of the workman is that he was appointed as a casual labour on 9-5-94. He worked till 18-4-95. He was not given any work from 19-4-95. The management wanted him to work as Bhagwan Das. This workman refused. This annoyed the management and his services were terminated. The work which the workman was doing is still available with the management. His termination of service is arbitrary. He has been retrenched without one month's notice and retrenchment compensation. The workman wants his reinstatement in the service and wages and allowances for the period.

3. The management appeared on 30-6-98 and 27-8-98. The management remained absent on 20-10-98 and 29-1-99.

4. The workman has filed his affidavit and proved his case. The workman proved that he has worked from 9-5-94 to 18-4-95. This period is more than 240 days. Thus the termination of workman is retrenchment. The workman has not been given retrenchment notice and compensation. Hence the termination of workman is illegal. It is declared that the workman is in service from 19-4-95 till today. the workman shall be paid wages and salary for this period in 3 months time after publication of the Award. If this amount is not paid in this time, the workman shall be entitled at Rs. 12 percent P.A. interest on this amount. The Award is given in favour of the workmen. Management to pay Rs. 1000/- as costs to workman.

5. Copies of the Award be sent to Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 23 जुलाई, 1999

का.आ. 2309.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उद्यान विकास उप मंडल, केन्द्रीय लोक निर्माण विभाग, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-99 को प्राप्त हुआ था ।

[सं. एल-42012/185/87-डी II (बी)]
कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 23rd July, 1999

S.O. 2309.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Horticulture Development Sub-Division. CPWD, Nagpur and their workman, which was received by the Central Government on the 23-7-99.

[No. L-42012|185|87-D.II(B)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Shri D. N. Dixit, Presiding Officer.
CASE NO. CGIT|LC 1/4 R/128/88

Assistant Director of Horticulaure,
Horticulture Development Sub-Division,
Central Public Works Department,
Seminary Hills, Nagpur .. Management

Vs.

Dilip Ramrao Mankar,
Lonkhadinagar,
Nagpur. .. Workman

AWARD

Delivered on this 25th day of May, 1999

1. The Government of India, Ministry of Labour vide its order no. L-42012-185|87-D-2(B) dt. 1-12-88 has referred the following dispute for adjudication by this Tribunal :—

"क्या सहायक निदेशक, उद्यान, उद्यान विकास उप मंडल, केन्द्रीय लोक निर्माण विभाग नागपुर को दैनिक दर पर काम करने वाले माली श्री दिलीप रामाराव मानकर को 13-9-83 से काम से रोकने की कार्यवाही न्यायोचित है ? यदि नहीं तो संबंधित कर्मकार किस अनुतोष का हकदार है ?"

2. The case of workman is that he was appointed as a Mali on 17-9-81 and he worked continuously up to 12-9-83. Sometimes on the month of September 1983 the services were terminated orally. The workers who were terminated with the workman were taken back in service but the workman even though senior to other workers has not been taken up in the employment. One died in February 1987 and this vacancy was also filled by some other workman and has not been given to the workman. Thus management is deliberately trying to keep away the workman from the employment. The workman has not been paid retrenchment compensation, and has not been given notice before retrenchment. It be declared that order of termination is bad and he is still in the service of the management. The workman wants wages from the date of termination till date.

3. The case of management is that the workman was engaged on temporary vacancy from time to time. He never worked continuously. He was paid wages for the days he worked. The workman was not a permanent employee or employee in a permanent post. The workman has not acquired statutory right for the post. There was no need to give termination notice to the workman. Further there was no need

to give retrenchment compensation also to the workman. The workman himself stopped coming for work. Management wants Award in their favour.

4. The workman filed his affidavit and he was cross-examined on it. The management examined Shri Leela Singh. This witness stated in para-8 of his statement that the workman has worked for more than 240 days prior to his termination. The management has filed Annex. 1 and Annex. 2 with the statement of claim. This also shows that the management required the services of workman and breaks in service were artificial. I hold that workman has worked 240 days in 12 months time prior to his termination in the year 1982 and 1983.

5. The workman has not been given termination notice and retrenchment compensation. This termination of the workman is illegal. I agree with the contention of the workman.

6. The award is given in favour of the workman. His termination is declared illegal. He will be deemed to be in service from 13-9-83 till date. The workman has not worked for the management during this period and he is not entitled to salary from 13-9-83 till date of award. This period will be counted for purposes of pension and promotion. Parties to bear their own costs.

7. Copies of the award be sent to Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 29 जुलाई, 1999

का. आ. 2310.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत अर्थ मूवर्स लिमिटेड, के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-7-99 को प्राप्त हुआ था।

[सं. एल.-14012/2/98-आई आर (डी यू)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 29th July, 1999

S.O. 2310.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Earth Movers Ltd. and their workman, which was received by the Central Government on the 29-7-1999.

[No. L-14012/2/98-IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/84 of 1998

Employers in relation to the Management of Bharat Earth Movers Ltd.

AND

Their Workmen.

APPEARANCES.

For the Employer : Shri Ashok D. Shetty & Smt. P. S. Shetty, Advocates.

For the Workmen : Shri Ravindra Palaspagar, Advocate.

Mumbai, dated 22nd June, 1999

AWARD

The Government of India, Ministry of Labour by its Order No. L-14012/2/98-IR(DU) dated 16-06-98, had referred to the following Industrial Dispute for adjudication :

"Whether the action of management of Bharat Earth Movers Ltd., by terminating the services of the workman, Shri Mansukh Malji Makwana, w.e.f. 13-1-97 is justified ? If not what relief the workman is entitled to ?"

2. Mansukh Malji Makwana the workman pleaded that M/s. Bharat Earth Movers Ltd. (hereinafter called as a company) manufacturing buldozers, railway coaches and other several products supplied to various companies in India. It is Government undertaking. There are more than 100 employees working in it. The workman's father was in employment of the company. His brother is working since 11-4-84. It is averred that his father was assured that on his retirement workman would be appointed in his place. He retired in 1987. On 1-7-87 workman was given an appointment letter stating that he is appointed as a casual labourer. His working hours were from 9.00 a.m. to 5.00 p.m. He was assured to give the permanent job after following procedure. It is submitted that the nature of work which he performs is of a perrineal nature.

3. The workman submitted that as per the Government policy the requisite number of employment is reserved for SC/ST category. This reservation is not filled up by the company. It is submitted that the company never made permanent to the employees who are from this category. The workman belongs to Scheduled Caste.

4. The workman averred that he had worked for more than 240 days in a year continuously. He was signing the muster rolls up to 1990. But when he asked for permanency he was not allowed to sign the musters and the payments were made on vouchers. It is contended that he was orally terminated on 14th January, 1997. No procedure contemplated under the Industrial Disputes Act of 1947 was followed at the time of termination. It is submitted that he was not paid compensation nor any domestic inquiry was conducted before his termination.

5. The workman prays that the company may be directed to reinstate him in his original permanent post with continuity in service alongwith back wages from 14-1-97.

6. The company resisted the claim by the written statement (Ex-8). It is averred that the reference suffers from laches. It is pleaded that the workman filed a complaint under the MRTU & PULP Act, 1971 before the said labour court. Now this reference is not tenable. It is averred that Makwana is not a workman within the meaning of section 2(s) of the Industrial Disputes Act of 1947.

7. The company pleaded that the workman is a casual employee for 78 days between 3-4-87 to 19-6-87 and 89 days between 23-6-87 to 21-9-87 and 77 days between 26-9-87 to 10-12-87. From January '88 to May '92 the sanitary work in the ware house was done by utilising locally available part time service on the need basis and there was no full time casual appointment. From May '92 onwards the cleaning and sanitary work of the ware house was being got done by the stores incharge. Therefore locally available part time service and the amounts so spend by him was reimbursed to that officer. As such there was no casual appointment for the sanitary maintenance job of the ware house. It was done by various persons through contract. There was no fixed timing for doing the job. The contractor used to depute various persons to do the job. It is averred that the company is bound to follow the recruitment rules for any type of employment in the company. It is averred that the workman was never appointed by following the recruitment rules. It is therefore the question of his termination from service does not arise.

8. The company pleaded that the workman was never appointed by the company as claimed by him. His father was never assured that the workman would be appointed in his place. It is denied that the workman is entitled to regularisation as claimed with other reliefs. It is prayed that the reference may be answered accordingly.

9. The workman filed a Rejoinder (Exhibit-10) and reiterated the contension taken by him in the Statement of Claim. He also denied the contentions taken by the company in the Written Statement which are contrary to his claim.

10. The issues are framed at Exhibit-17. The issues and my findings there on are as follows :—

	Issues	Findings
1.	Whether Makwana is a workman within the meaning of section 2(s) of the Industrial Disputes Act of 1947 ?	Yes
2.	Whether it is proved that he is in continuous service as contemplated under section 25B of the Industrial Disputes Act of 1947 ?	Yes
3.	Whether the provisions of re trenchment were not made applicable before terminating the services of Makwana ?	No
4.	Whether the action of the management in terminating the service of Makwana w.e.f. 13-1-97 is justified ?	No
5.	If not, to what relief he is entitled to ?	As per Order

REASONS

11. Mansukh Makwana (Exhibit-20) affirms that he has passed 8th standard. His father was working in the company and was doing the work of sweeping and cleaning the fan, tables, toilets etc. He was also pouring the water in the water coolers, making tea for the guests and staff twice a day. His brother also worked in the said company. He stays at different place seperately. He affirms that when his father used to remain on leave company officers used to call him for doing his fathers job which he used to do. His father used to request the company that after his retirement the job may be allotted to him. Earlier the office was at Delisele Road and which is near to his residence and now it is shifted to the present place.

12. Mansukh affirmed that his father retired on 31st March '87 and thereafter there were two vacant posts of SC & ST in the company. He was employed by the company on temporary basis from 3rd March '87 at the rate of Rs. 15/- per day. He was given the appointment letter (Exhibit-6| pg. 9). On perusal of this letter it can be seen that he was working from 3-4-87 to 19-6-87 for maintaining sanitation and cleanliness of the ware house at Regional Office.

13. This position is not in dispute. On the contrary Dobhal (Ex-26) the Senior Manager affirms that in that period he worked for 78 days. Thereafter from 23-6-87 to 21-9-87 he worked

for 89 days and from 26-9-87 to 10-12-87 he worked for 77 days. But according to him thereafter Makwana was not appointed as a casual labourer.

14. Makwana (Ex-20) affirmed that he was doing the same work which his father did. Parag, the clerk who was in that company used to give the material for purchase and for preparing tea. Dobhal, Gopal, Jha and other officers used to supervise his work. Thereafter the company was shifted to Ghatkopar.

15. Makwana affirms that at Ghatkopar there are 30 persons out of which five are officers, 3 carpenters and other staff were under them. He affirmed that at that place he was paid on vouchers and the vouchers are signed by the officer viz. Dobhal, Zhanand Rammore. Those vouchers are produced at pages 14 to 48 and 51 to 68 of Exhibit-6. Makwana in his cross-examination has deposed that he produced vouchers duly signed by him up to 13th November 1992. After perusal of the vouchers this admission in the cross examination appears to be incorrect. Because Makwana in his testimony had referred to all these vouchers which relates to the period after November 1992. No-doubt the vouchers of the earlier period are also there. Dobhal in his cross examination states that the certificates which are at pgs. 22, 23, 24, 25, 27, 32, 33, 34 & 35 bears his signature. These certificates states that the expenditure of Rs. 500 has been incurred towards maintenance and cleaning of ware house in the Ghatkopar during a particular month. It is pertinent to note that Makwana had given vouchers after receiving the amount of Rs. 500 having received the amount towards sanitary maintenance job and cleaning of ware house. It is pertinent to note that some time expenditure is sown to be Rs. 500 and some time it is Rs. 850.

16. Makwana affirms that he is continuously doing the job at Chatkopar also. Parag (Ex-23) the clerk of the company affirms that Makwana used to attend the duties at 8.45 a.m. But, he does not know how much time is required by him for cleaning and sweeping the office and toilets. Makwana used to prepare tea and the material was provided by him. He in categorical term states that there was nobody else than the workman for cleaning the toilet.

17. Dobhal (Ex-26) affirms that from January 1988 to May 1992 the sanitary work in the ware house was done by utilising the locally available part-time service on need basis. There was not full time casual appointment. He did not depose that a particular person was coming for doing that job. He further affirmed that from May 1992 onwards that work was got done by him through Makwana by various persons on part time basis and the amounts paid by him for that purpose were reimbursed by the company. There was no casual appointment. But he is not in a position to tell who used to come for doing that job than Makwana. His testimony that Makwana used to send somebody for doing that work and he was not personally coming is not acceptable in view of the position that Makwana and Parag corroborates each other that the job was being done by Makwana.

18. From the testimony of these witnesses it is clear that the work which was carried out by Makwana is of perrineal nature. Makwana's father was appointed when the company was not at Ghatkopar. Mukwana had produced photo copies of muster rolls for the period 3-4-87 to 10-12-87 wherein the working hours are shown as 8.45 a.m. to 5-15 p.m. But so far as this working is concerned that was admitted position. But that situation has changed. At last some wing of that company has shifted to Ghatkopar. From the perusal of the vouchers it can be seen that Makwana himself had stated that, that particular amount was received by him for part time service tendered by him for that particular period and while reimbursing the amount the voucher was prepared for part time sweepers work and its payment. I therefor find that the work which was carried out by Makwana at Ghatkopar was of a part time employment only.

19. Makwana affirmed that after his father's death in 1987 there were two vacancies in the company for SC candidates. Parag (Ex-23) affirms Makwana, Pawar Kamble was appointed in the year 1984. Kamble A P. and Parag T.L. were appointed in 1990 and one Ms. Geeta Makwana was appointed in 1993. Kamble A.P. was not in service of the company and he was there up to 1993 only. He also does not know up to what year Pawar S C. was in service. But he is no more there. So far as this position is concerne it is not challenged Dobhal is not in a position to give exact position of the availability of the sweepers post in the company. From the testimony of Makwana and that of Parag it has to be said that there must be the post of a sweeper in the company and which is not filled. But the date cannot be ascertained. In fact the company should have adduced evidence to that effect which it did not. It is therefore, it has to be presumed that when Kamble left in 1993 the vacancy accrued.

20. Dobhal affirmed that Makwana used to send somebody on his behalf for doing the job. In other words there was a contract or an agreement between company and Makwana for doing that particular job. No such agreement is produced. Therefore it has to be said that Makwana was engaged by the company for doing that job which he was doing as a part time employee and getting fixed remuneration as agreed. This position continued eventhough there is a vacancy in that post.

21. The company had not lead any evidence to show that how Makwana is not a workman within the meaning of section 2(s) of the Industrial Disputes Act of 1947. I have already discussed above what type of work Makwana was doing. Looking to the nature of job which he was doing and the wages he gets he falls under the category of workman.

22. From the testimony of Makwana, Parag and Dobhal it is very clear that the workman is in continuous employment of the company is a part time sweeper. He has completed 240 days in a year as contemplated under section 25B of the Act. He was not given any notice nor retrenchment compensation before his termination which took place on 14-1-97. Obviously his termination is illegal

23. Makwana has claimed back wages from 14-1-97 and regularisation from the earlier period. He has also claimed difference of wages form the earlier period. He is to be regularised from the time when the vacancy accrued. Prima facie it appears that it accrued in 1993. In the result I record my findings on the issues accordingly and pass the following order:

ORDER

The action of the management of Bharat Earth Movers Ltd., by terminating the services of Shri Mansukh Malji Makwana w.e.f. 13-1-97 is not justified.

The management directed to reinstate the workman in service in continuity.

The management is directed to treat the workman in regular employment in a vacancy which accrued due to Kamble A.P being not in service and pay him all back wages deducting the wages already paid to him from that date.

S. B. PANSE, Presiding Officer

श्रम मंत्रालय

नई दिल्ली, 16 जुलाई, 1999

का. आ. 2311 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) के खण्ड 33—ग के उप खण्ड (2) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार इसके द्वारा श्रम मंत्रालय, भारत सरकार की अधिसूचना संख्या : जैड—13011/8/96—सी. एल. सं.—II, दिनांक 18 अक्तूबर, 1996

द्वारा कथित अधिनियम के खण्ड—7 के अन्तर्गत गठित श्रम न्यायालय, जयपुर को ऐसे श्रम न्यायालय के रूप मे विनिर्दिष्ट करती है जो उस राशि का निर्धारण करेगा जिस उपधारा में संदर्भित कोई लाभ राजस्थान राज्य में किसी उद्योग में नियोजित कर्मकारों के संबंध मे धनराशि के रूप में संगणना की जायेगी जिसके संदर्भ में केन्द्रीय सरकार समुचित सरकार है।

[फा. सं. जैड—13011/1/97-सी एल एस-II]
पी. पी. मित्रा, निदेशक

New Delhi, the 16th July, 1999

S.O. 2311.—In exercise of the powers conferred by sub-section (2) of Section 33 C of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby specifies the Labour Court, Jaipur constituted under section 7 of the said Act by the notification of the Government of India in the Ministry of Labour No. Z-13011/8/96-CLS-II dt. 18th Oct., 1996 as the Labour Court which shall determine the amount at which any benefit referred to in that sub-section would be computed in terms of money in relation to workmen employed in any industry in the State of Rajasthan in respect of which the Central Government is the appropriate Government

[F.No. Z-13011/1/97-CLS.II]
P. P. MITRA, Director

नई दिल्ली, 20 जुलाई, 1999

का.आ. 2312.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार साउथ सेंट्रल रेलवे, हुबली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-99 को प्राप्त हुआ था।

[सं. एल-41012/134/93-आई.आर. (बी-I)]
जी. रॉय डैस्क, अधिकारी

New Delhi, the 20th July, 1999

S.O. 2312.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of South Central Railway, Hubli and their workman, which was received by the Central Government on 19-7-1999.

[No. L-41012/134/93-IR(B-I)]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 14th July, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 34/97

I PARTY

Shri M. S. Havalad,
Girinichanlal,
Near Gondate House,
Karwara Road,
HUBLI-580 029.

II PARTY

The Chief Workshop Manager,
South Central Railways,
Hubli Workshop,
HUBLI-580 020.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-41012/134/93 IRBI dated 5-5-95 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of South Central Railway in the dismissal of Shri M. S. Havalad w.e.f. 7-11-79 is legal and justified ? If not, to what relief is the workman entitled?"

2. The I party was working in the Boiler Shop of Hubli Workshops at the relevant point of time. On 5-7-1978 at about 17.15 hrs. he was apprehended by N. R. Mujawar HR-57 and Sri S. Y. Naduvenkeri who are on duty of North gate of workshop while this workman was in unlawful possession of 7 Iron Angels which were packed in a paper and rolled in his rain coat then secured in the Cane Basket fixed to his Cycle.

3. After doing necessary formalities the II party initiated a Domestic Enquiry after issuing a charge sheet Ex. M-1 dated 8/9-11-1978.

4. The Enquiry Officer recorded the evidence of relevant witnesses made available by the II party. Thereafter gave opportunity for the I party to place his evidence to defend his case.

5. He then prepared an enquiry report as per Ex. M-8. Since the report proved the misconduct of this workman, the penalty advice was given to him and thereafter an order was passed to removed the workman from services. This Order was upheld in the appeal. The Order of removal was made on 7-11-79 and the appellate authority passed the Order and communicated on 8-7-1980.

6. Since the Order of removal is on the basis of findings in the Domestic Enquiry we have framed the preliminary issue to give a finding on the validity of Domestic Enquiry.

> "Whether the II party conducted Domestic Enquiry against the I party in accordance with settled principles of law (Railway conduct and disciplinary) rules, 1968 and principles of natural justice ?"

7. Admittedly this enquiry was conducted during 1978. We recorded the evidence on this issue on 15-6-99. Thus it is natural the enquiry officer retained long back. Therefore the management examined an Office Superintendent who gave the evidence on the basis of the records built up and maintained with reference to Domestic Enquiry and other orders. Through this witness we have marked the documents Ex. M-1 to M-12, out of this Ex. M-7 is the proceedings of the enquiry which correctly reflects the events that took place in the enquiry.

8. In the cross-examination of this witness the only evidence that can be looked into is that this witness stated that no criminal case filed against this workman and also he has not produced any records to prove that this incident the service records of this workman was not good.

9. Contrary to this the evidence of the I party is one of the denial about allegations made against him.

10. This workman was removed from service during 1979. This dispute referred to this Tribunal on 5-5-95. He has not places any material before this Tribunal the reason for delay to raise this dispute after lapse of 16 yrs. This fact itself is sufficient to reject the reference as "Delay kills the Right of a Person".

11. Even otherwise the reference does not require any consideration in view of the fact that the validity of Domestic Enquiry was held in favour of the management. When once the validity is held in favour of the management this Court cannot reappraise the evidence recorded before Enquiry Officer to came to a different conclusion. If any material is placed to show that the Order of the Enquiry Officer is perverse then to that extent the allegation may be appraised. No such allegation is made.

12. The allegation of theft is a serious offence and therefore if such allegation is proved the order of removal from service is not a factor that will shock the conscience of this court. It is also not disproportionate to the proved misconduct. Therefore the benovolant provisions contained under Section 11A cannot be pressed into service, in view of a proved misconduct of a serious allegation

13. Having regards to these facts and circumstances the II party are justified in dismissing the service of this Workman for proved misconduct. The reference is answered accordingly.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 20 जुलाई, 1999

का.आ. 2313.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-99 को प्राप्त हुआ था ।

[सं. एल-41012/114/91-आई.आर. (डीयू) बी. I,
सं. एल-41012/115/91-आई.आर. (डीयू) बी. I,
सं. एल-41012/116/91-आई.आर. (डीयू) बी. I]

जी. रॉय, डैस्क अधिकारी

New Delhi, the 20th July, 1999

S.O. 2313.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway and their workman, which was received by the Central Government on 19-07-1999.

[No. L-41012/114/91-IR(DU)/B.I.,
L-41012/115/91-IR(DU)/B.I.,
L-41012/116/91-IR(DU)/B.I.]
G. ROY, Desk Officer

ANNEXURE

BEFORE SHRI P. R. DAVE, INDUSTRIAL TRIBUNAL, AHMEDABAD

Ref. (ITC) No. 5/93
No. 4/93
and No. 6/93

ADJUDICATION

BETWEEN

1. The General Manager (E), Head Quarter Office, W. Rly., Churchgate, Bombay.
2. The Divisional Electrical Engineer, Western Rly., Central Office Building, Valsad-396001.
3. The Chief Traction Foreman (Construction), W. Rly., Valsad. ..1st party.

Vs.

The Secretary,
Paschim Railway Karamchari Parishad,
Representing the concerned workmen
1. Shri Ramsaransingh
2. Shri Mukeshkumar Nagindas
3. Shri Malkam Mansukhlal, respectively. ..2nd party.

In the matter of termination of concerned workmen.

APPEARANCES :

Shri H. B. Shah, Advocate, for the 1st party.
Shri S. B. Nigam, Advocate, for the 2nd party.

AWARD

The above mentioned industrial disputes as per the schedule mentioned below between Western Railway and the workmen employed under it have been referred for adjudication under Section 10(1) of the I.D. Act, 1947 by the Desk Officer, Government of India, Ministry of Labour, New Delhi by his orders No. L-41012/116/91-IRDU dated 23rd December,

1992, No. L-41012/114/91-IRDU dated 28th December, 1992 and No. L-41012/115/91-IRDU dated 28th December, 1992 respectively to the Industrial Tribunal at Ahmedabad. Thereafter under an appropriate orders the above references are transferred to this Tribunal for proper adjudication :

SCHEDULE

"Whether the action of the Divisional Electrical Engineer (TRD), Bulsar, Western Railway, Valsad through the Chief Traction Foreman (C), Bulsar, Western Railway, Valsad in terminating the services of Shri Ramsaransingh, Shri Mukeshkumar Nagindas and Shri Malkam Mansukhlal respectively w.e.f. 20th June, 1986 is legal and justified ? If not, to what relief the workman is entitled ?"

All these three references are filed by Western Railway Karamchori Parishad on behalf of the three concerned workmen stating some facts and raising some issues and therefore are disposed of by this common award.

2. The second party has filed statements of claim and prayed to direct the first party to reinstate these workmen with all consequential benefits and back wages from the date of termination by holding the termination notice as illegal and bad in law.

3. The facts of the case of the second party, to be briefly stated, are as under :— The concerned workman Shri Ramsaransingh was engaged on 15-10-84, Shri Mukeshkumar Nagindas was engaged on 8-10-84 and Shri Malkam Mansukhlal was engaged on 15-10-84 under the first party or their subordinates and these workmen have completed 120 days continuous service and were entitled for temporary status on completion of the same as per the provisions of Indian Railway Establishment Manual and were entitled to all the benefits of temporary employees and were also getting the same. The permanent Way Inspector directed workmen, on the alleged ground of no work available with him to the Traction Foreman (C), Valsad without protecting their scale of pay and all consequential benefits which were available earlier on completion of 120 days while granting temporary status and thereafter on 20-6-86 the workmen were discontinued vide notice dated 5-6-86 without following the due procedure of law as per I.D. Act, 1947 and Rule 77 of the I.D. Rules, 1953 ; since the aforesaid action of the first party Chief Traction Foreman (Construction), Valsad was in contravention of the I.D. Act, 1947 and was also without power or competency, the same was challenged before Central Adm. Tribunal at Ahmedabad Bench and the dispute under the I.D. Act was also raised and the cases before bench of Central Admn. Tribunal were withdrawn thereafter. Hence these references. And it is stated that in view of the facts and circumstances the action of the railway requires to be held illegal, unjustified, void ab-initio and also in violation of provisions of I.D. Act, 1947 read with Rule 77 of I.D. rules. The action of the railways even after granting temporary status, terminating the services without due procedure of law and by ignoring the provisions of IREM requires to be declared illegal and without competency and the railways failed to have proper seniority of the workmen and in absence of observing and keeping seniority, the termination in whatsoever manner requires to be held illegal.

4. The first party has filed written statement denying the facts as stated in statement of claim and raised the point that the references are not tenable under law and as the second party workmen were engaged as casual labour for a particular period; their Divisional Electrical Engineer, Western Railway and the General Manager (P), W. Rly. are not the employer of these workman and therefore no relief can be claimed against it. The first party has also raised the point that the references are bad for delay and latches and sequences ; that termination took place on 20-10-86, the second party has not submitted reasons for raising the dispute after about 5 to 6 years. The first party has stated that the first party has not violated the provisions of Section 25F read with Rule 77 of the ID Act and as per the service records available with the first party, it seems that the second party workmen were engaged as casual labour for particular period under the PWI (PCRS) BL. Engagement letters are submitted with reply and it is stated further that termination does not fall within the purview of "retrenchment" defined under S. 2(oo) of the I.D. Act, 1947 as the workmen were re-engaged as casual labour under Chief Traction Foreman (Construction), Valsad and that was the fresh engagement ; as prior to that on 20-3-85, the services were terminated for want of work and this fresh engagement was not in continuity with the previous Engagement with PWI. Because of non-availability of funds further work could not be carried out and therefore by notice dated 20-6-86 the engagements as casual labours were terminated and this action of the first party is not in violation of Section 25F of the I.D. Act and the workmen have not rendered the services of one year and therefore the question of service of notice does not arise. Under these circumstances the reference should be rejected.

5. The second party has examined workmen S/Shri Mukeshkumar Nagindas, Malram Mansukhlal and has produced following documents :

1. Papers of conciliation proceedings and reference order.
2. Service cards of all these three workmen.
3. Notice for termination of Ramsaransingh dtd. 17-6-81.
4. Letter dtd. 19-6-90 addressed to Mukeshkumar Nagindas.
5. Letter dtd. 9-8-91 addressed to Mukeshkumar Nagindas for appointment as casual labour.
6. The application of Shri Mukeshkumar Nagindas for appointment as casual labour.

These documents are placed in Ref. (ITC) No. 5/93.

6. The first party has produced appointment letter and termination letter of the workmen as annexure with written statement.

7. Heard the arguments of Shri S. B. Nigam for the second party and Shri H. R. Shah for the first party.

8. Mr. Nigam vehemently submitted that at the time of termination these workmen were in temporary status as stated in service cards and therefore even at the time of termination they should have been treated as in temporary service and in that case they cannot be relieved as casual labours. Mr. S. B. Nigam also raised the point that they are not terminated by competent authority as termination took place by order of supervisor only vide Ex. 22 and even in case of casual labours removal from service could only be as per seniority because as per decision of Hon'ble Supreme Court in Indrapal Yadav's case, the first party was duty-bound to prepare divisionwise seniority list and in this case the seniority list was not prepared and not produced before this Tribunal also and therefore the first party cannot say that these workmen were juniors and therefore as per principles of natural justice of 'first come first go', they are removed and even under Rule 77 of the I.D. Act the employer is duty-bound to prepare seniority list and in case of removal from service juniors should go first. Mr. Nigam submitted that at the relevant time 50 persons were recruited and out of them 10 were terminated. Therefore 40 persons should be working somewhere and therefore in these circumstances somebody might be junior to these workmen also and unless seniority list is prepared and produced, it cannot be said that these workmen were juniors and more over no permission under Section 25N of the I.D. Act was obtained from appropriate government. Mr. Nigam drew the attention of this Tribunal Ex. 21 and submitted that as per this letter no casual labour are engaged, but thereafter vide Ex. 31 one person was called for on application and therefore apparently there is some recruitment of casual labour and therefore these workmen should have the benefit of Rule 78 also. Mr. Nigam referred to judgement in group of cases

by Central Admn. Tribunal, Ahmedabad Bench dtd. 16-2-87 and the judgement in the case No. 135/88 and 136/90 by the CAT and some extracts from railway establishment manuals.

8. Mr. H. B. Shah for the first party submitted that the termination order dtd. 20-6-96 is disputed in this reference and the demand raised in 1991 and reference in 1992. Therefore there is 5 years delay in raising the demand and no explanation for this delay is given anywhere and therefore the reference is bad in law for delay and latches and delay defeats rights and remedy both. Mr. Shah cited 1993 LAB IC 1972 (SC). Mr. Shah submitted that in this case words for two broken spell of time in two different units have been taken and the second spell of time fresh engagement as daily wages and when the workers discontinued on 20-6-86 and it was termination of that fresh engagement and therefore in that period, the workmen not completed even 100 days and therefore are not entitled to any protection as they were casual labour. Mr. Shah further submitted that in view of the record of S/Shri Ramsaransingh, Mukeshkumar Nagindas and Malkam Mansukhlal, it is apparent that they were engaged for completion of work on expiry of period i.e. for particular work and period and therefore Section 2(oo) has no application in the circumstances of this case and more over all these workers were not on permanent post and unless posts are there they cannot be held entitled to reinstatement on any post. Mr. Shah cited 1997 (5) SCC 434 and 1997 (4) SCC 351 and further submitted that as there is no need of work, the persons have no right for non-availability of work and no right to post under Section 2(oo) (bb) comes into play and for discontinuation of the service of casual labour it is further submitted that for discontinuation of the casual labour even no procedure is required to be followed under the I.D. Act or I.D. Rules, and referred to 1987 (1) LLJ (141). Mr. Shah referred to Ex. 34 and submitted, that Nagindas Chhabildas was retired on 30-6-90 who requested to engage his son as fresh casual labour and it says that persons are engaged only when required for work.

9. Mr. Nigam replied the arguments of Mr. H. B. Shah and raised the point that the second party concerned workman is not retired, but his father was retired and therefore it does not affect the scope of this reference and as per chapters 25 and 23 and paras 2, 5 and 11, when these workers have obtained temporary status, they cannot be discontinued as casual labour to see whether they are discontiinued no other order of termination dated 20-6-1996 is produced before this Tribunal; the first party say that at Valsad it was fresh engagement and therefore this point is baseless and no seniority list also is produced before the Tribunal.

10. In view of the pleadings and submissions of the parties the following issues arise for determination :

1. Whether the action of Divisional Electrical Engineer (DRT), Valsad through Chief Traction Foreman (C) Western Railway, Valsad of terminating the services of three concerned workmen is legal and justified ?

2. What Order ?

My decision is as under :

1. Negative.

2. As per final Order

REASONS :

All these three references are pertaining to three workers and second party challenges the orders of termination of services of these workers from 20-6-86 and it is admitted fact that these workers were working as casual employees under the first party at Valsad and it is the case of second party that they were directed by permenent Way Inspector, on the ground of no work available with him to the Traction Foreman (C), Valsad on 9-12-1985, and therefore it is transfer of work under the first party at Valsad. Now in record there are service cards of these employees in which days of work are mentioned. And as per these service cards Shri Ramsaransingh worked for 173 days and it is endorsed in this card that the temporary status granted from 27-4-87. Vide order dated 3-7-87, and it is also noted that he was recruited as fresh case from 12-9-84 and further it is endorsed that temporary status granted from 8-4-86 vide order dated 3-7-86 and he worked for 187 days as per record. In the service card of Mukeshkumar Nagindas it is endorsed that temporary status granted from 20-6-86 vide order dated 3-7-86 and it is further mentioned that temporary status granted for 20 days from 11-5-1987 to 30-5-87 vide order dated 23-12-85 and his working days are 241. Now it is pertinent to note that as per Indian Railway Establishment Manual para 2302 (1) 14 days notice is required for termination of temporary service and as per sub-para 3 notice of termination of service under this paragraph should be given upto an authority not lower then appointing authority. Now it is pertinent to note that the first party has produced only termination order dated 20-6-86 and there is reference to letter No. TRD/Const/E/7 dated 5-6-86 and that letter dated 5-6-86 is not produced or proved before this Tribunal to prove that these workmen were served with these statutory notice before termination. It is also pertinent to note that no seniority list of casual labours is produced before Tribunal and termination order dated 20-6-86 is signed by CTFO and it appears from this letter and it is not mentioned anywhere that he is the appointing authority of these casual labourers and he has sent copy of this letter to Sr. DBB (TRD)BL for confirmation, Now as per rule referred to above the notice of termination of service should have been given by appointing authority and it in case City F.O. Valsad being appointing authority there was no need of confirmation from any other authority. Therefore it indicates that the City F.O. was not appointing authority in case of these workmen. Now it is clear from the record that these workmen were casual labour and they obtained temporary status by virtue of rules as mentioned in their service cards and as per direction of Hon'ble Supreme Court in Indrapal Yadav's case seniority list of casual labourers were to be prepared and unless seniority list is prepared one cannot say that these workmen are junior to others as per rules at the time of discontiinuation of service. On the ground of non-availability of work no junior can be retained in service and no senior can be terminated before termination of his juniors in service and therefore in absence of seniority list, the action of first party cannot be held justified and if the seniority list is prepared by the first party, the first party should have produced the same before this Tribunal. It is also pertinent to note that only one termination order was produced before this Tribunal and therefore it is not possible to hold that there were two traction spell of time and other was fresh engagement at Valsad. It is very easy to hold that it was transfer to Valsad as mentioned in statement of claim and therefore naturally the transfer is also no legal. As in case No. 335/87 CAT has held that casual labourers are not liable to be transferred and transfer is not condition of their service and in the gamut of transfer of casual labour from one project to another or from one division to the other, seniority is disturbed, with the result casual labour had a great dis-advantage as he is easily deprived of all the benefits available to him. It is held in the case of Union of India vs. Ram Kumar in 1988 by CAT, Allahabad Bench that in accordance with the para 149 of the Indian Railway Establishment Manual :

> "Temporary employee (casual labourer who has attained temporary status, cannot be discharged without being given one month's notice."

In the present case there is no real proof for service of notice before termination. However, there is reference in termination order to letter dated 5-6-1986, but if we consider that to be notice, it would be 15 days notice, and as per rule mentioned above one month's notice is required in case of servants having temporary status. It is the submission of Mr. Shah that the appointment was for a particular work and till particular date and he referred to appointment letter in this connection, but it should be made clear that after expiry of that date, these workmen were kept continuous in job and were afforded with temporary status. Therefore they cannot be held as appointed mercy for a particular work and till a particular date and therefore Section 2(oo) (bb) i.e. explained in retrenchment laws does not apply and the matter will fall under definition of retrenchment in Section 2(oo) and therefore if the conditions precedent to retrenchment are not applied with, the retrenchment will be illegal and void : therefore these workmen are entitled to relief sought for and so far as point of delay and latches are concerned, it should be noticed that there is no provision of limitation under

the I.D. Act even then the delay and latches on the part of the employee may deprive him of interim wages or benefits or interim benefits but it cannot defeat the course of action if contravention of fundamental provision is there. Hence there is no force in this submission. Thus the first party has contravened the provisions of Section 25F and Rule 77 of the I.D Act : therefore the second party is entitled to relief sought for in case of these three workmen. However, in view of delay in filing the complaint in this reference before the authority, the workmen are not entitled to any back wages.

11. In view of above discussion I pass the following order.

ORDER

The reference are partly allowed all the orders of termination of the concerned workmen S/Shri Ramsaran Singh Mukesh Kumar Nagindas & Malkam Mansukhlal dated 20-6-1986 are hereby set aside and the first party is hereby directed to reinstate these workmen without any back wages and also to pay Rs. 2,000/- to the second party towards cost of this reference. This order is to be implemented within 30 days from the date of publication of this Award.

SECRETARY,
Ahmedabad, 28th June, 1999

P. R DAVE, Industrial Tribunal

नई दिल्ली, 20 जुलाई, 1999

का.आ. 2314.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-99 को प्राप्त हुआ था ।

[सं. एल-12012/635/ 89-डी II (ए)]
जी. रॉय, डैस्क अधिकारी

New Delhi, the 20th July, 1999

S.O. 2314.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 20-7-99.

[No. L-12012/635/89-D. II(A)]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 12th July, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 27/90

I PARTY :

The Secretary,
Syndicate Bank Staff Union,
10/E, J. C. Road, Cross.
Bangalore-560002.

II PARTY :

The Deputy General Manager,
Syndicate Bank,
Zonal Office (IR Cell),
Gandhinagar,
Bangalore-560009.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/635/89-D.II dated nil for adjudication on the following schedule.

"Whether Management of Syndicate Bank is justified by imposing punishment of stopping of One increment, with cumulative effect on Sh. Venkatesamurthy ? If not what relief employee is entitled to ?"

2. The II Party imposed the above punishment after conducting a Domestic Enquiry. The validity of Domestic Enquiry was treated as a preliminary issue. This issue was framed on 9-10-1991. Unfortunately the parties indulged initially with regard to the issue, who has to prove the validity of Domestic Enquiry, the question of appearance of legal practitioner on behalf of the II Party. The above questions caused inordinate delay in deciding the main point of dispute. It has become a common feature in these labour cases to raise unnecessary issues, which may be deliberate or due to innocence. Ultimately it is the workman who suffers.

3. The allegation of charge made against the I Party was that on 20-6-87, he left the Office at 12-30 p.m. without prior permission from his superiors and there after returned at 1.30 p.m. in a full drunken state. After entering the Office he stood outside the Chief Managers Cabin and started shouting at the top of the voice in the most abusive language against certain staff members. When he was called inside the Cabin of the Manager (Administration) he entered and it was quite unhappy to note that he was dead drunk during office hours. A Kannada version of the abusive language used by this workman is also stated in the charge sheet. The translation into English is not necessary as it contains a vulgar language which may not be translated indulging into spoiling its Originality.

4. The I Party, in his claim statement, questioned the validity of Domestic Enquiry. As it regards to merits of the case he has accepted the evidence spoken to by some of the witness for the management to contend that the findings of the Enquiry Officer is perverse.

5. The II Party in their counter statement justified the action taken against this workman and further stated that his interpretation as it relates to evidence of the witnesses is totally unnecessary as the question

of fact which was direct is involved and proved by the management.

6. In the Domestic Enquiry the finding of the Enquiry Officer is based on the particulars of the evidence as spoken to by the Staff Members who are present when this incident occurred inside the Bank premises. Infact MW-2 Mr. B. N. Baleger, the Manager, MW-1 Sh. P. N. Shenoy, stated the actual incident occurred, and their evidence corroborated with each other.

7. This Court has already gave a finding that the Domestic Enquiry was fair and proper. In view of these findings, in the final analysis is to be considered whether perversity in the findings of the Enquiry Officer is proved. This tribunal cannot reappreciate the evidence and review the order passed by the Disciplinary Authority based on the report. The interference is necessary if the punishment is shockingly disproportionate. Such material is not present in this dispute.

ORDER

8. Having regards to these facts and circumstances the management are justified in imposing the punishment of stoppage of one increment. The reference is answered accordingly.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 20 जुलाई, 1999

का.आ. 2315.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-99 को प्राप्त हुआ था ।

[सं. एल-12012/346/93-आई.आर. (बी-II)]
जी. रॉय, डैस्क अधिकारी

New Delhi, the 20th July, 1999

S.O. 2315.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 20-7-99.

[No. L-12012/346/93-IR(B-II)]
G. ROY, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 25 of 1994

Parties :

Employers in relation to the management of Central Bank of India

AND

Their workmen

Present :

Mr. Justice A. K. Chakravarty, Presiding Officer.

Appearance :

On behalf of Management.—Mr. S. K. Chatterjee, Deputy Chief Officer (Law) of the Bank

On behalf of Workmen.—Mr. D. K. Chatterjee, General Secretary of the Union.

STATE : West Bengal INDUSTRY : Banking

AWARD

By Order No. L-12012/346/93-IR(B-II) dated 26th July, 1994 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the demand of the Central Bank of India Employees' Congress (WB) to regularise the services of Shri Suraj Kumar Hela in the Central Bank of India is justified ? Was Shri Hela entitled to participate in the recruitment process undertaken by the Bank through Employment Exchange for filling up reserved vacancies ? Whether the management of Central Bank of India was justified in not providing the opportunity envisaged in the Ministry of Finance O.M. No. F. 3/3/194/87-IR dated 16-8-90 to Shri Hela ? What relief, if any, is Shri Hela entitled to?"

2. Instant dispute has arisen at the instance of Central Bank of India Employees' Congress (WB) (in short the union) for regularisation of the services of Shri Suraj Kumar Hela in the Central Bank of India (in short the Bank).

3. Union's case, in short, is that it raised a dispute over the recruitment of the concerned workman Suraj Prasad Hela in the permanent cadre as a safai karamchari at Lake Town Branch under the North Regional Office of the Bank where he was alleged to have worked from 17-12-1990 to 11-9-1991 as safai karmachari on daily wage basis at the rate of Rs. 10/- per day. It is alleged that he worked for 257 days during this period and that fact will be evident from the vouchers. Concerned workman is a scheduled caste candidate. It is alleged that he is entitled to get the permanent post of safai karmachari as per Bank's rule and Supreme Court judgement. Union has further alleged that as per Bank's circular No. R.O. Calcutta North/PRS/91-92/9/2092 dated 16-9-1991 and Central Office Circular No. CO/1990-91/622 dated 12-3-1991, the concerned workman is also entitled to be absorbed. As per circular dated 4th October, 1990 the concerned workman was eligible for pro-rata scale of wages for the actual number of days including Sundays and Holidays falling in between his days of work. The concerned workman having been admittedly paid Rs. 10/- per day there was deprivation of the pro-rata scale of wages during the above period

It is further alleged that the management by issuing different circulars called for names of those safai karmacharies for recruitment who had completed 60/180/240 days of service. Regional Employment Exchange was also requested to forward the names of S.C./S.T. candidates for filling up the posts of safai karmacharies. It is also alleged that the concerned workman was entitled to be absorbed under section 25H of the Industrial Disputes Act, 1947. The concerned workman was neither given any appointment letter nor any termination letter and he was not also paid any compensation or notice before termination of his service. The union has accordingly prayed for regularisation of service of the concerned workman.

4. The management of the Bank in its written statement has denied that Shri Hela has worked as safai karmachari for 257 days or for 240 days during the period from 17-12-1990 to 11-9-1991. It's positive case is that he could not work for more than 216 days during the period from December, 1990 to July, 1991 during the period he worked under the Bank. The Bank denied that it had any obligation to pay prorata wages under circular No. CO/1990-91/622 dated 12-3-1991 issued by the Central Office, Bombay and that has no applicability in respect of safai karmacharies elsewhere. The Bank also alleged that the concerned workman was not eligible for appearing in the interview. The Bank also denied that there is any application of Section 25H or Section 25F of the Industrial Disputes Act, 1947. The Bank also alleged that the Awards referred to by the union have no application to the facts and circumstances of the present case. The Bank has also alleged that the engagement of the concerned workman being merely need-based, his service was not required after that need was satisfied. The Bank has accordingly denied that the workman had any right to be absorbed in the service of the Bank. The Bank has accordingly prayed for dismissal of the reference.

5. The union in its rejoinder has alleged that the terms of paragraph 18(4) of the bipartite settlement dated 10-4-1989 was violated as no preference was given to the permanent part-time employees drawing scale wages in filling-up full time vacancies in the same cadre. It is also alleged that giving appointment of short durations is unfair labour practice. It's other allegations are merely repeatation of its own original written statement.

6. It appears from the order dated 4-2-1999 that argument was heard in part but since the representative of the union failed to appear on 5-7-1999, his submission was deemed to have been concluded and the representative of the Bank made his submission accordingly.

7. The schedule of reference can be devided into three parts. The first part consists of whether non-regularisation of the service of the concerned workman was justified or not. Second part is whether the concerned workman was entitled to participate in the recruitment process and the third part is whether the Bank was justified in depriving the workman of the opportunity as per Ministry of Finance O.M. No. F. 3/3/104/87-IR dated 16-8-1990. Each of these three questions therefore requires consideration in this case.

8. Regarding the period of service rendered by the concerned workman the parties seem to differ greatly. The concerned workman and WW-2 Anand Mohan Singh, who is a permanent sub-staff, have alleged in their evidence that the concerned workman worked for 257 days from 17-12-1990 to 11-9-1991 as safai karmachari at Lake Town Branch of the Bank. MW-1 Nalini Ranjan Debnath, a Senior Manager of the Bank stated in his evidence that the concerned workman worked from 17-12-1990 to 20-6-1991 rendering service for 124 days in 1990-1991. Some payment vouchers were produced by the Bank which were collectively marked Ext. M-1, but these are not all the vouchers as it appears from Ext. W-5 which is the report of the Deputy Chief Officer, Law to the Assistant Labour Commissioner that Shri Hela worked for 216 days and not 240 days. If along with the said period of actual work rendered by the concerned workman. Sundays and holidays are taken into account as per circular dated 4th October 1990 marked Ext. W-6 in this case, there shall not remain any doubt that he worked for more than 240 days in the year. It was tried to be submitted on behalf of the Bank that this circular Ext. W-6 was for the Bombay employees only, but that is neither apparent from the circular itself nor is there any evidence to prove the same. The workman thus have succeeded in proving that he worked for 240 days during the year 1990-91.

9. The question that will immediately come up for consideration on such finding is whether the workman shall be entitled to claim regularisation on the basis of such rendering of service for more than 240 days in a year. In this connection reference has got to be made to the circular dated 12th March, 1991 marked Ext. M-2 in this case. This circular gives some rights to the subordinate staffs including safai karmacharies for their regularisation in service. It must however be noted in this connection that the benefit of this circular shall be available only to the persons who were in service after 1-1-1982 and upto 31-12-1990. Any service after 31-12-1990 shall accordingly not count for consideration as per this circular. Almost the entire service period of the concerned workman, barring a few days towards the beginning, being outside that date i.e. 31-12-1990, the workman shall not be entitled to claim absorption/regularisation as per this circular. No other circular came to my notice while hunting up the exhibits filed by the parties in support of the concerned workman's claim for regularisation. Extracts from the bipartite settlement dated 19-10-1966 was produced on behalf of the union, but there is nothing there to support the claim of the concerned workman. In paragraph 20.6 of the settlement it is stated "Subject to a bank's recruitment rules, if any, part-time employees will be given preference for filling of full-time vacancies, other things being equal." It is not a case of absorption of any part-time employee. Though it was never the union's case, nor is there any evidence that the concerned workman was ever appointed as a part-time safai karmachari, still then, the union has exhibited one document marked Ext. W-7 and on a plain reading it will show that circular was for regularisation of part-time temporary safai karmacharies. The circular is dated 6-4-1998. The concerned workman being neither a part-time safai karmachari nor a full time safai karmachari at that time as his service was

admittedly terminated in 1991 no question of application of this circular in his case can arise.

10. It is true that continuous period of work of an employee for sufficiently long time may be a good reason for regularisation in the employment, but when the public sector financial institutions like the present Bank having its own rule of recruitment, it is bound to follow such rules and no back-door appointment can be permissible in these cases. It should also be remembered in this connection that the service of the concerned workman was terminated as far back as 11-9-1991. The concerned workman being thus admittedly not in service, no question of regularisation of his employment under the Bank can arise.

11. Coming now to the second point under reference, namely, whether the concerned workman was entitled to participate in the recruitment process undertaken by the Bank through Employment Exchange for filling up reserved vacancies, here again, the claim is obviously made on the basis of the circular dated 12-3-1991 (Ext. W-5). I have already stated that the concerned workman does not come within the zone of consideration as per this circular as only small number of days within the specified time fall within his service period. Under paragraphs 4 and 5 of this circular there are provisions for temporary employees to appear in the interview, if their names are registered and sponsored by the Employment Exchange. These provisions are not clearly applicable because as per paragraph 6 the above provisions are not applicable in case of safai karmacharies and secondly because the test laid down there is not fulfilled. The workman therefore was not entitled to participate in the recruitment process.

12. The point that last comes up for consideration under the reference is whether the management of the Bank was justified in not providing the opportunity envisaged in the Ministry of Finance O.M. No. F. 3|3|104|87-IR dated 16-8-1990 to the concerned workman. It is not possible to give any decision in respect of this matter because that particular Office Memorandum in terms of which the question of providing opportunity to the concerned workman could be considered, was not produced by either of the parties before the Tribunal. In such circumstances the said question cannot be answered.

13. I have thus considered all the relevant facts and circumstances along with the evidence on record and the position of law in this matter. Since the union has hopelessly failed to prove its case regarding regularisation of the concerned workman along with concerned matters in terms of the schedule of the reference that I am not in a position to grant any relief to the concerned workman in this case. The action of the management of the Central Bank of India in the matters under consideration under the reference are accordingly unassailable.

This is my Award.

A. K. CHAKRAVARTY, Presiding Officer

Dated, Calcutta, the 6th July, 1999.

नई दिल्ली, 20 जुलाई, 1999

का.आ. 2316.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटक बैंक लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-1999 को प्राप्त हुआ था ।

[सं. एल-12012/181/97-आई.आर. (बी.-1)]

जी. रॉय, डैस्क अधिकारी

New Delhi, the 20th July, 1999

S.O. 2316.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Karnataka Bank Ltd., and their workman, which was received by the Central Government on 20-07-1999.

[No. L-12012|81|97-IR(B-I)]

G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 13-7-1999.

PRESENT :

Justice, R. Ramakrishna, Presiding Officer.

C.R. No. 19|1998

I PARTY :

Sri. Byralinge Gowda
11, Byrava Nilaya, Pipe Line
3rd Cross, Srinagar
Bangalore-560 050.

II PARTY :

The Chairman
Karnataka Bank Ltd.,
Head Office, Kodialbail
Mangalore-575 003.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012|181|97-IR(B.I.) dated 4-3-1998 on the following schedule :

SCHEDULE

"Whether the action of the management of Karnataka Bank Ltd., is justified in dismissing Shri Byralinge Gowda from services w.e.f. 15-2-1996 ? If not, to what relief the workman is entitled ?"

2. The first party was dismissed from service on the basis of the findings of the enquiry officer who conducted a domestic enquiry on the allegation of charge contained in the charge sheet dated 21-7-1993.

3. The allegation of charge was that this workman clandestinely removed the cash of Rs. 40,000 from the amount given to him for stiching for mis-utilising the same for his personal benefit which act amount to dishonesty, fraud and criminal breache of trust constituting a gross misconduct under Para 19.5(J) of the Bipartite Settlement. The facts leading to framing of this charge is based on the following circumstances which is highlighted in the charge sheet and the same is reproduced below :

(i) That, on 29-6-1993, you were entrusted with the duty of stitching the note bundles and while doing so, you without the knowledge of the cash clerk, clandestinely removed a sum of Rs. 40,000 from the amount given to you for stitching by the cashier Sri. K. R. N. Kadri and misutilised the said amount for your personal use. Later, at about 2.30 p.m. you told the said cashier that you had removed Rs. 15,000 from the cash bundles without his knowledge and had paid the amount to some one else. Thereafter, you reimbursed the said amount by paying Rs. 12,000 in cash and Rs. 2,000 by obtaining a cheque from Smt. Kishori Devi and Rs. 1,000 by yourself cheque. However, while closing the cash at 5.30 p.m., cash shortage of Rs. 25,000 was noticed and when the cashier enquired with you about the shortage of cash, you refused to have taken and strongly stated that you don't know anything about it. Thereafter, the matter was informed to the A.G.M., R.O., Bangalore and he came to the branch for investigation along with the Development Officer, Sri. M. A. Kandoor, when the A.G.M., R.O., Bangalore enquired with you, though you admitted the removal of Rs. 15,000 without the knowledge of the cashier and payment of the same to a third person, you strongly denied your involvement in cash shortage of Rs. 25,000. Thereafter, the matter was referred to police and when the Police Inspector interrogated you about the cash shortage, you admitted your fraudulent act of removal of Rs. 40,000 in total and agreed to reimburse the shortage of cash of Rs. 25,000 to the Bank. Later, the shortage of Rs. 25,000 was made good by you by means of a cheque given by Sri B. Satish, a customer, in your favour and the same was refunded by you to the customer on 2-7-1993.

4. To prove the misconduct the management have examined 17 witnesses and got marked 24 documents for the management. The workman examined himself and not examined any witnesses on his behalf. The enquiry officer placing reliance on both oral and documentary evidence submitted a report dated 12-6-1995. After elaborately discussing the materials produced in the enquiry, he came to the conclusion that the charges against this workman is proved and he did committed the misconduct under Para 19.5(J) of Bipartite Settlement

5. The first party filed claim statement initially questioned the validity of domestic enquiry, though he has been defended by a practising Advocate which facility was provided by the management. He has not made much of the fact as it relates to the fairness of the enquiry but his contention is that the charges are fabricated and the act called for a minor punishment under clause 19.12 of the Bipartite Settlement and therefore the report of the enquiry officer is a perverse order. He has also further submitted that he has put in more than 23 years of unblemished service and he got his dependents to take care and therefore this tribunal has to interfere with the order of dismissal by invoking Section 11A of the Industrial Disputes Act, 1947.

6. The second party in their counter statement, as it relates to the validity of domestic enquiry have contended that there is no material for this workman to be agitated on the mode of the enquiry as he has been defended by a legal practitioner and therefore there could not be any objections by this workman at this stage of he case.

7. As it regards to the misconduct the second party contended that the misconduct committed by this workman is extremely serious involving moral turpitude and criminal breache of Trust. Therefore there could not be any order shorter than the order of dismissal on the proved misconduct.

8. However having regard to the fact that the order of dismissal is preceded by the report of the enquiry officer in the domestic enquiry, a preliminary issue was framed on 23-12-1998. Later the Learned Advocate for the first party filed a memo that his party is not prepared to challenge the validity of domestic enquiry by means of an oral evidence and after marking the domstic enquiry documents this issue may be decided.

9. Having regard to this submission this tribunal held the validity of domestic enquiry in favour of the management. The arguments are heard on merits on the available materials on record.

10. The learned Advocate for the second party submitted that a major misconduct committed by this workman being proved in the domestic enquiry he is not entitled for any benefit in this regard.

11. The modus operandi of this workman was clearly made out both in the evidence and the report of the enquiry officer. Infact the witnesses examined

in the domestic enquiry from MW-1 to MW-17 have corroborated the evidence of each other. The workman contrary to what he stated earlier in Ex-M-20 (in the enquiry) has altogether gave an evidence denying his participation in the missing of Rs. 40,000 on the relevant date. He has also denied of having borrow to sum of Rs. 2,000 by one Kishori Devi in the form of a cheque to make good Rs. 15,000 which he wanted to adjust before 2.30 p.m. He has also disputed the fact of retaining Rs. 25,000 with him and later making good of this amount by arranging a cheque for Rs. 25,000 from a customer Mr. Satish which money has been re-imbursed after 3 or 4 days to said Satish by one of the relative of this workman.

12. The learned Advocate for the first party has raised some superfluous pleas such as the cashier not noting the total number of currencies handed over to the workman for stitching and therefore there is a doubt whether for the shortage of Rs. 25,000 this workman may be held responsible.

13. The fairness of the domestic enquiry was decided in favour of the management. A learned Advocate has defended the case of the first party in the domestic enquiry. The enquiry officer after appreciating the oral evidence and documentary evidence came to the conclusion that this workman has stelthly removed this amount and infact purchased a gold biscuit for Rs. 30,000 with view to exchange the same with some marginal profit and then doing good this money to the money entrusted to him for stitching. This adventure was failed as one of the fact shown as that Gold Biscuit was not a genuine gold and his expectations to make good this money being failed, he some how adjusted Rs. 15,000 before 2.30 p.m. and thereafter due to his failure to exchange the gold biscuit for money he has shown his innocence regard shortage of Rs. 25,000 and thereafter he has accepted the said fact and made good through a cheque issued by Mr. Satish which also bears the signature of the first party.

14. Therefore it is conclusive that this workman indulged in committing this offence with knowledge that if the same is committed, the penalty he has to pay.

15. The Learned Advocate for the first party again submitted that taking into consideration his unblemished service of 23 years an order of reinstatement is necessary.

16. Though it is said that the conduct of the first party is a temporary mis-appropriation even then the gravity will not give any benefit to him for lesser punishment. This fact is supported by the case laws on the subject.

17. However, the fact is undisputed that there was no allegation against this workman from last 23 years. This may be due to his luck in not detecting any misconduct or for the first time this workman decided to make an adventure of this nature to earn some money though he is not entitled.

18. The laws is well settled that when a major misconduct is proved, to give the benefit of Section 11A of the act the punishment should be shown as dis-proportionate.

19. Clause 19.5 defines some of the acts enumerated therein in gross misconduct. Under clause (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss as a gross misconduct. Clause 19.6 defines the nature of punishment if an employee is found guilty of gross misconduct. It is the discretion of the Disciplinary Authority to adopt any of the punishment enumerated by the sub-clause (a) to (c).

20. It is shown that this workman had an unblemished service for a period of 23 years. Therefore this Tribunal has jurisdiction to invoke Section 11A as it relates to the punishment. Since this workman worked for a period of 23 years, if he has retained in a normal course he had the benefit of getting his gratuity and other monitory benefits, if he has not been dismissed from service. Therefore there is no impediment to substitute the order of dismissal to the punishment enumerated in sub-clause (c) according to which the misconduct may be condoned and the workman may be ordered a mear discharge.

21. Having regard to these facts and circumstances the following order is made :

ORDER

The order of dismissal passed by the disciplinary authority is substituted by condoning the misconduct and the dismiss l is treated as discharge.

Any monitory benefit that will accrue by substitution of the order of punishment shall be paid to this workman.

The reference is answered accordingly.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 20 जुलाई, 1999

का.आ. 2317 —औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कार्पोरेशन बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलौर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-99 प्राप्त हुआ था।

[सं. एल.-12012/82/93-आई.आर. (बी.-II)]

जी. रॉय, डैस्क अधिकारी

New Delhi, the 20th July, 1999

S.O. 2317.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Corporation Bank and their workman, which was received by the Central Government on 20-7-99.

[No. L-12012/82/93-IR(B-II)]

G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 13|7|1999

PRESENT :

JUSTICE R. RAMAKRISNA, Presiding Officer.

C.R. No. 49|93

I PARTY

The Jt. Secretary,
Corporation Bank Employees Union
H-5, Manish Towers,
84, J.C. Road,
Bangalore-560 002.

II PARTY

The Personnel Manager.
Corporation Bank,
45|3, Residency Road,
P.B. No. 2543,
Bangalore-560 025.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012|82|93-IR(B-II) dated 26-8-1993 on the following schedule :

SCHEDULE

"Whether the claim of Corporation Bank Employee Union, Bangalore that the management of Corporation Bank was not justified in treating Sri. L. Govindaraju as having abandoned his services with the Bank voluntarily is correct ? If so, what relief, is Sri. Govindaraju entitled to ?

2. The first party is a sitting corporator of Bangalore Mahanagara Palike. He has successfully elected from Sevashram constituency of Rajajinagar, Bangalore.

3. He was initially joined as a Peon in the second party Bank on 6-2-1990. He expressed his willingness to contest Corporation Election under a Janatha Dal ticket as per Ex-C-1, and requested for permission to contest. The management by their letter Ex-M-1 dated 12-3-1990 has rejected his request showing the administrative reasons However, the first party disregarded Ex. M-2 and contested the election. He was duly elected and started working as a Corporator in this constituency.

4. The first party in not stopped at this. He wrote a letter Ex. M-3 dated 19-6-1990 for granting a special leave for 2 years as a special case. The Bank declined to consider his request as per Ex. M-4, and further directed him to report to duty failing which the necessary action will be initiated against him. The first party in a reply to this letter Ex. M-5 has taken strong exception to Ex. M-4 and again requested for special leave. The second party vide their letter dated 22-10-1990, Ex. M-6, brought to the notice of this workman the position of law and also instructed him that his attitude will give power to the management to invoke clause 17(a) of the Bipartite settlement and without prejudice they directed the first party to report for duty within 30 days.

5. The first party in a detailed letter dated 20-10-1990, Ex. M-7, have contended that the second party are guilty of unfair labour practice and therefore they should desist from invoking clause 17(a). However, the management in their letter Ex. M-8 dated 28-12-1990 have taken a special and generous view and thereby instructed this workman as a final opportunity to rejoin the duty by 30-1-1991. Once again a reply was sent by this workman as per Ex. M-9 reiterated what he has stated earlier. The management passed a final order dated 8-5-1991, Ex. M-10, and by taking the deemed power have ordered that this workman is voluntarily retired from the services of the Bank w.e.f. 31-1-1991.

6. The first party gave an eloborated representation dated 15-7-1991 as per Ex. M-11. Later he appears to have raised an Industrial Dispute resulted in this reference.

7. The facts narrated above are undisputed. The first party in his claim statement raised various contentions one being that he is a popular person doing works for public cause and therefore, the management are not justified in striking off his name as voluntarily retired from services under clause 17(a).

8. The second party justified their action as according to them that the Rules does not provide for an employee to contest the election to the Corporaion, Legislative Assembly, Legislative Council etc., except some other field which was defined in the Indian Bank Organisation confidential circular. They have contended that the ground urged by the first party for granting leave does not cover the term "Special Leave" which is meant for doing duty the National Civil Defence, Home guards, training, to attend the courts, family planning, donating blood in the hospital, sports camp and anv national or international sports events.

9. The first party who required to justify that the action of the management justify his claim against the action of the management has failed to appear before his tribunal and give evidence in support of it. The learned Advocate who was representing him after exhausting the indulgence shown by this court has retired from the case by filing a retired memo Though a notice was sent to the first party he has not cared to appear before this tribunal However, the second party examined a witness to justify their action.

10. Through this witness all the relevant documents were marked from Ex. M-1 to Ex. M12.

11. It is no doubt that clause 17(a) gives an unfellerd right to the management to treat the workman as voluntarily retired, if his case falls within the frame work of clause 17(a). The management has to perform certain duties before invoking this clause, which they have did. Ex. M12 is the instruction

passed by Indian Banks Association and circulated to all different extensions of Public Sector Banks prohibiting contesting of the elections and even making canvas in the general elections or election to local authorities.

12. The workman has dis-regarded and disobeyed the directions of the bank and also flouted the general law on the subject. In addition to that he has not justified that the action of the management is against the provisions contained in Bipartite Settlement. By raising this dispute he has unnecessarily wasted the valuable time of this tribunal by dragging on this proceedings from 1993 till today.

Having regard to these facts and circumstances this reference is rejected.

JUSTICE R. RAMAKRISHNA. Presiding Officer

नई दिल्ली, 21 जुलाई, 1999

का. आ. 2318.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल रेलवे भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-1999 को प्राप्त हुआ था ।

[सं. एल 41012/48/91-आई.आर. (बी. I)]

जी. रॉय, डेस्क अधिकारी

New Delhi, the 21st July, 1999

S.O. 2318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway, Bhopal and their workman, which was received by the Central Government on 20-7-1999.

[No. L-41012/48/91-IR(B-I)]

G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR.

PRESIDING OFFICER SHRI D. N. DIXIT.

CASE NO. CGIT/LC/R/204/91.

Divisional Railway Manager,
Central Railway,
Bopal ... Management

Vs.

Bhaiyalal S/o. Babulal,
C/o. Anwar Jaidi, Kulharda.
P.O. Harda,
Distt. Hoshangabad. ... Workman.

AWARD

Delivered on 28th Day of May, 1999.

1. Ministry of Labour, Govt. of India vide its Order No. L-41012/48/91/IR dt. 12-11-91 has referred the following dispute for adjudication by this Tribunal :

"Whether the action of the Central Railways Bhopal in terminating the services of Shri Bhaiyalal S/o. Shri Babulal was justified ? If not, to what relief the workman is entitled to ?"

2. The case of the workman is that he was first appointed by the railways on 19-3-82 and his service card No. was 307610, issued by Permanent Way Inspector Panvel. From Panvel he was transferred to Harda. The PWI Harda informed him that his service card was lost. On appeal to the Asst. Engineer the workman was allowed to work at Burhanpur from 28-1-85 to 14-8-86. Since 19-4-86 the workman has not been given work as he does not possess the service card. Every effort by the workman to get duplicate card has been turned down. The applicant wants that he would be taken back in service. The applicant wants wages from 19-7-86 and continuity of service.

3. According to the management, it is admitted that he was working as monthly rated casual labour in B.B. Division from 21-1-85 to 18-6-86 under PWI Burhanpur. It is further admitted that service card No. 307610 was issued in favour of workman by PWI Panvel. The workman has passed the medical examination and placed in Category B-1. Management admitted that service card of workman is lost. The workman was removed from services because the work at Burhanpur has come to an end. The Divisional Engineer wrote a letter to PWI Panvel for issue of duplicate service card in favour of the workman but the same has not been complied.

4. As stated above, it is admitted that the workman had his service card bearing no. 307610. This card was deposited with PWI, Harda. PWI Harda lost this card. At intervention of Asst. Engineer Khandwa the workman was taken on service from 28-1-85 to 18-4-86 by PWI Burhanpur. The work came to an end in Burhanpur from 19-4-86. Since 19-4 86 the workman is running from door to door and is not been given work by the employees of the management on protest that he does not have a service card. The fault is that PWI Harda who have lost the card of the workman, for the fault of PWI Harda the workman can not be punished He is deprived of livelihood from 19-4-86.

5. I accept the contention of the workman. He is deemed to be in service of PWI Harda from 19-4-86 till today. He will be paid wages and allowances and seniority as admissible to employees to his cadre from 19-4-86 till today. This period will be counted for pension and gratuity also. PWI Harda to pay within 3 months from the date of publication of the Award to the workman pay and allowances from 19-4-86. If this is not done the workman shall be entitled to get interest at the rate of Rs. 12 per cent P.A.

6. PWI Harda to provide him employment from the date of Award. The Award is given in favour of the workman. Management to pay Rs. 2000/- as costs to workman.

7. Copies of Award be sent to Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 21 जुलाई, 1999

का.आ. 2319.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्विष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-I हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-1999 को प्राप्त हुआ था ।

[सं. एल-12012/141/97-आई.आर. (बी.1)]
जी. रॉय, डैस्क अधिकारी

New Delhi, the 21st July, 1999

S.O. 2319.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-I, Hyderabad as shown in Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 21-07-1999.

[No. L-12012/141/97-IR(B-I)]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri C. V. Raghavaiah, B.Sc., B.L., Industrial Tribunal-I.

Dated : 28th day of May, 1999

MISCELLANEOUS PETITION NO. 5 OF 1998

IN

INDUSTRIAL DISPUTE NO. 6 OF 1998

BETWEEN :

Sri T. Venkateswarlu, S/o Chinna Jalaiah aged about 48 years, Teller, State Bank of India, Vetapalem-523 187, Prakasam District (Region-I) .. Petitioner/Petitioners

And

1. The Dy. General Manager, State Bank of India, Zonal Office, Tirupathi-517 501.

2. The Asst. General Manager, State Bank of India Regional I, Zonal Office, Tirupathi-517 501.

3. The Branch Manager, State Bank of India, Vetapalem-523 187, Prakasam District. .. Respondent/Respondents

APPEARANCES :

Sri C. Suryanarayana, Advocate for the Petitioner.

Sri B. G. Ravinder Reddy, Advocate for the Respondents.

AWARD

This is a petition filed under Section 33-A of I.D. Act for declaring that the irrevocable option obtained by the respondent Bank from the petitioner as void and hence nullity in as much as a candidate or employee is always at liberty to decline and reject an offer of appointment and promotion when it is calculated to victimise the employee, as the respondent violated the provision of the above section.

2. Facts.—The petitioner who is working as Teller in the respondent Bank was subjected to penal transfer from Ongole to Vetapalem though he was let off even without imposing a statutory warning after elaborate domestic enquiry. The said transfer is the subject matter of I.D. No. 6/98 on the file of this Tribunal which was referred by the Government of India, Ministry of Labour vide its Order No. L-12012/141/97-IR(B1) dated 1/3-4-98 and the same is pending. The petitioner is presently working in Vetapalem Branch and drawing Special Allowance of Rs. 450 P.M. while so the Hyderabad circle office of the respondent Bank issued a circular dated 20-1-1998 which was circulated among the staff of Vetapalem Branch on 28-1-98 that as one time measure employees drawing special allowance which is enhanced to Rs. 486 per month with effect from 1-2-1997, will be permitted to exercise irrevocable option to seek conversion as Computer Operator and if they fail to exercise the option now they will permanently forego the opportunity of conversion as Computer Operator. The petitioner exercised this option on 29-1-98 and the employees are required to perform the duties of Computer Operators even without being appointed as such. According to the petitioner, the employees are entitled and hoodwinked to sign an agreement under cover of an option letter (which is virtually a contract), which is ab initio void as option letter gives a Honson's choice. On the basis of above illegal contract, the respondent transferred the petitioner to Cuddapah Branch while it retained 29 juniors of the petitioner in region I i.e. Prakasam petitioner contended that his transfer to Cuddapah is calculated to victimise by putting him far away from his family and as the petitioner raised dispute in I.D. No. 6/98. According to the petitioner the said transfer was effected to persecute him for being member of Central Committee of State Bank employees union which is an unrecognised minority union. The District and gave those particulars in the petition. The petitioner prayed for setting aside his transfer order dated 27-10-1996 as the same was done during the pendency of above I.D. and to direct the respondent to retain him at Vetapalem as otherwise he will suffer irreparable loss and also to declare even the irrevocable option obtained by the respondent as void and null.

3. The respondent filed counter resisting the petition. It admitted that petitioner is working as Teller in Vetapalem Branch that the head office issued circular to enable its employee to seek conversion as Computer Operator, that petitioner exercised the option and he was posted to Cuddapah as he did not withdraw the option though an opportunity was given to do so on or before 30th May, 1998 and it could not act upon the relinquishment letter submitted by the petitioner on 27th October, 1998 i.e. on the date he was relieved. It denied that irrevocable option is an illegal contract as such void ab initio and the petitioner subject to penal transfer for the reason he belonged to unrecognised union. It denied that junior of the petitioner retained in the same region. It contended that posting of computer is based on zonal office seniority as per which one can be posted to any place in the one as per option exercised by him. It also denied that transfer is unfair labour practice and contended on the other hand that transfer is in accordance with law and there are no mala fides but was done on the basis of option exercised by him. It further contended that petition is not maintainable as there is no violation of any service condition pending I.D. No. 6|98 as such liable to be dismissed on this ground itself. It thus contended that petitioner is not entitled to any relief and prayed for dismissing the petition.

4. On the above contentions the following points arise for consideration.

1. Whether there is no violation of any service condition pending I.D. 6|98 if so the petition is not maintainable.

2. Whether the irrevocable option obtained by the respondent for conversion as computer is void and if so, the posting of the petitioner at Cuddapah on the basis of said option is illegal ?

3. To what relief the petitioner is entitled ?

5. The petitioner examined himself as WW1 and filed Ex. W1 to W7. On behalf of the respondent Sri Y. Nagaraj Manager Personal and HRD in Region-1 Zonal Office Tirupathi was examined as MW1 and Ex. M1 to M5 are marked.

6. POINT NO. 1.—The petitioner filed this petition U|s. 33(1)(a) of I.D. Act on the ground that he has been transferred to Cuddapah as Computer Operator on the basis of illegal irrevocable option form obtained from him by way of victimisation as he belonged to unrecognised union, pending I.D. 6|98 which is subject matter of transfer from Ongole to Vetapalem. According to the respondent the petition is not maintainable as there is no violation of any service condition, which is condition precedent for maintenance of petition U|s. 33(1)(a) of I.D. Act.

7. The admitted facts are that the petitioner i.e. WW1 is working as Teller in Vetapalem branch of respondent bank having been transferred from Ongole branch. In respect of that transfer the petitioner raised industrial dispute on the ground that he was transferred by way of punishment for participating in strike, on conclusion of disciplinary proceedings and it is numbered as I.D. 6|98 and pending on the file of this tribunal. While so Ex. M1 circular dt. 20-1-98 was issued by Hyderabad Circle Office calling for irrevocable option from Teller etc. staff for conversion as computer operator on zonal seniority basis. The petitioner gave Ex. M2 option on 29-1-98. The zonal office Tirupathi of SBI also issued Ex. M4 circular dt. 2-2-98 with regard to option for conversion as computer operator. Later Ex. M5 circular was issued by the zonal office giving an opportunity for revoking the irrevocable option given by the staff for conversion as computer operator on or before 30-5-98 and said to have sent to all the branches including Vetapalem branch where WW1 is working. As he did not revoke the option within the stipulated time the WW1 was appointed as computer operator and posted to Cuddapah under Ex. W1 order dt. 27-10-98. It was however not tendered to the petitioner personally but sent by registered post to the address of his father but returned unserved as borne out by Ex. M5. But coming to know about Ex. W1 order on 27-10-98 itself the petitioner gave Ex. W2 relinquishment letter at about 4.00 p.m. The petitioner gave Ex. W3 letter to the Branch Manager, Vetapalem on 28-10-98 marking copies to higher authority. Coming to know from him that he (WW1) was relieved on 27-10-98, to permit him to join in duty in view of Ex. M2 relinquishment letter given by him on 27-10-98.

8. As maintainability of the petition is in dispute it is useful to refer to Sec. 33(1)(a) of I.D. Act under which provision this petition is filed, Sec. 33(1) reads as follows :

> "During the pendency of any conciliation proceedings before a Conciliation Officer or a board or any proceedings before an arbitrator or labour court or tribunal or national tribunal in respect of an industrial dispute no employer shall."
>
> (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workman concerned in such dispute, the condition of service applicable to them immediately before the commencement of such proceeding.

9. It is contended on behalf of the respondent that there is no violation Sec. 33(1)(a) of ID Act as service condition not changed. But according to the learned counsel for the petitioner this condition is violated as the workman was posted to Cuddapah is computer operator on the basis of Ex. M2 irrevocable option obtained from him as such there is change of service condition pending I.D. No. 6|98 which is subject matter of his transfer by way of punishment from Ongole to Vetapalem. The learned counsel of petitioner submitted that as petitioner raised dispute in I.D. 6|98, as a measure of vindictiveness he was posted to Cuddapah as computer operator as such there is change of service condition of the petitioner. Hence petition is maintainable.

10. On a careful consideration of the submission, material on record and provision of section 33(1)(a) of I.D. Act I find merit in the contention of the

respondent that the petition is not maintainable as there is no violation of service conditions of petitioner during the pendency of I.D. No. 6|98. Thus violation of service condition pending dispute is condition precedent for maintaining petition of this type vide decision reported in 1998 LLR 125.

11. The petitioner raised dispute in I.D. 6|98 on the ground that he was punished by way of transfer on completion of disciplinary proceedings though proposed punishment is warning. During the pendency of the said I.D. the petitioner gave Ex. M2 option for conversion as computer operator pursuant to Ex. M1 circular issued by Hyderabad circle office and acting on Ex. M2 the respondent posted the petitioner as Computer Operator at Cuddapah zone on the basis of zonal seniority under Ex. M1 order dt. 27-10-98. But coming to know of the said order the petitioner gave Ex. W2 relinquishment letter on the same day at 4.00 p.m. and Ex. W3 letter on 28-10-98 to permit him to report for duty at Vetapalem in view of Ex. W2 relinquishment letter given by him on the preivous day. It is not shown as to what condition of service was altered and changed to the prejudice of the petitioner during the pendency of I.D. 6|09. I do not think that posting the petitioner as computer operator at Cuddapah acting on the option given by him amounts to altering his service condition during the pendency of the I.D. 6|98 on the file of this Tribunal. This transfer or posting him as computer operator has nothing to do with the dispute raised in I.D. 6|98. It is of course a different issue whether he was posted to Cuddapah in a vindictive way for raising dispute in I.D. 6|98 and whether Ex. M2 option given by him is valid or not. As the respondent did not change service condition of the petitioner in any way during the pendency of I.D. 6|98 which is subject matter of his transfer from Ongole branch to Vetapalem branch, I am of the view that the petitioner is not maintainable. If service condition of an employee is changed to his prejudice during the pendency of dispute before Indutrial Tribunal then only petition of this type is maintainable U|s. 33(1)(a) of I.D. Act. Hence the point is answered in favour of the respondent.

12. POINT NO. 2 : According to the learned counsel for the petitioner Ex. M2 irrevocable option obtained by the respondent from the petitioner for conversion as computer operator is void and the transfer of posting of petitioner to Cuddapah is illegal as he gave Ex. M3 relinquishment letter. It is submitted that Ex. M1 order only amount to offer or intimation which the employee is entitled to decline that the petitioner was posted to Cuddapah zone while juniors to him are retained in Ongole zone. It is submitted that some of the emploees who have given option similar to Ex. M2 were allowed to revoke the same letter while the petitioner was not permitted to do so and Ex. M3 circular said to have been sent by Zonal Office Tirupathi giving opportunity to revoke option was not shown to the petitioner though said to have been sent to Vetapalem Branch also. Thus it is contended that action of the rspondnt amounts to unfair labour practice as it acted in a malafide and vindictive manner. Hence the respondent may be directed to accept Ex. W2 relinquishment letter given by the petitioner on 27-10-98 and retain him as Teller at Vetapalem as it has not even served Ex. W1 order on him but said to have relieved him on 27-10-98 itself though it used to issue relief proceedings separately taking the signature of the employee on it as borne out Ex. W5 to W7.

13. The learned counsel for the respondent repelled above contention. He denied that Ex. M1 circular with no provision for withdrawing option enclosing irrevocable option form is void. He has submitted that employees are given option for conversion as computer operator and are asked to exercise the option in Ex. M2 form and the petitioner exercised the option voluntarily and acting on it the respondent posted him to Cuddapah as he did not revoke the option within the time provided in Ex. M3 which was sent to all branches for circulation of the staff who exercised option. He contended that respondent did not act in any vindictive manner and it followed zonal seniority and computer operators are posted to branch which are computerised and some of the persons are permitted to revoke the option as they have done so within time as such there is no unfair labour practice. It is submitted that there is nothing in the evidence of FW1 to show that he was forced to sign on Ex. M2 option form, that hence it cannot be said to be an invalid document or agreement, merely because it is described as irrevocable option.

14. The evidence of WW1 would show that he gave Ex. W2 option to work as computer operator on 29-1-98 pursuant to Ex. M1 circular to give option form, that to his knowledge no circular issued permitting withdrawal of the option if once exercised by the employee, that some employees however have been permitted to withdraw the option later, that he gave the option as he felt it that post of cumputer operator is a promotion when offered to him. But later he came to know that it is not promotion. Hence he gave Ex W3 letter withdrawing the option on 27-10-98 at 4.00 p.m. after coming to know that he is posted as computer operator at Cuddapah by way of discrimination, that he was not served with Ex. W1 order that he received it on 3-12-96 and filed it in I.D. No. 6|98 Ex. M3 circular was not circulated to him by Branch Manager as he belong to unrecognised union and after 4.00 p.m. on 27-10-98 he was relieved at Vetapalem by way of victimisation and he is dispating the action of management in refusing to accept his relinquishment letter Ex. W2 and to retain him at Vetapalem but not the right of management in transfer the staff, that except himself and few others, all other staff mentioned in his petition are posted as computer operator in same zone while he is posted to Cuddapah and he has given Ex. W3 letter on 28-10-98 to permit him to report for duty at Vetapalem pursuant to Ex. W2 but was inform that he was relieved on the previous day itself. He also stated that he has right to decline or refuse the offer of appointment as computer operator and Ex. M2 option given by him may be declared as void and the respondent may be directed to accept Ex. W2 relinquishment letter.

15. He stated that one Nazir Ahmed working in Kandukur branch was permitted to withdraw option. But stated that he does not whether he withdrew the same within the time stipulated in Ex. M3 and also

admitted that he did not withdraw option prior to 27-10-98 and he filed Ex. M2 as he has no choice to change the proforma.

16. MW1 on the other hand deposed that Ex. M1 circular was issued for selection as computer operator, that the petitioner gave Ex. M2 option voluntarily, Which is irrevocable, that on 14-5-98 the bank issued Ex. M3 circular permitting the employees to revoke option given earlier, before 30-5-98 that said circular was sent to all branches for circulation among the staff, that as the petitioner did not revoke option he was given Ex. W1 order posting him as computer operator at Cuddapah that being of seperate category the selection of computer operator depends on zonal office seniority and there is no connection between seniority and place of posting and there is no victimisation in transferring petitioner from Vetapalem to Cuddapath. He admitted that there is no provision in Ex. M1 circular for withdrawal of the option. He also stated that under Ex. W5 letter the petitioner was informed by the manager that he is relieved at the close of working hours for attending the promotion test at Rayalaseema Girls Residential Junior College Tirupathi, that Ex. W6 circular handed over to the petitioner along with Ex. W5 relieving order and whenever an employee is transferred from one branch to another branch apart from transfer order relief order also will be given containing the signature of the employee relieved authenticated by branch manager and Ex. W7 is one such relief order dt. 21-12-90 issued to the petitioner for transferring from Tangutur to Ongole but signature of the petitioner could not be taken in Ex. W1 as he refused to receive when tendered personally. Hence copy of it sent by registered post on 31-10-98 which was returned unserved as borne out by Ex. M5.

17. Hence from the evidence of the above witness there is no dispute about the petitioner giving Ex. M2 option pursuant to Ex. M1 circular calling for option from the employees willing for conversion as computer operator, that on coming to know about Ex. W1 order posting him as computer operator at Cuddapah the petitioner gave Ex. W2 relinquishment letter withdrawing the option i.e. long after the period mentioned in Ex. M3 circular which petitioner claim that he has not seen. When Ex. M1 circular was circulated to petitioner also it is difficult to believe that Ex. M3 circular was not shown or circulated to him. Simply because file containing circular received by Vetapalem branch including Ex. M3 which is said to contain initials of petitioner also not filed, it cannot be said Ex. M3 was not shown to the petitioner or he has no knowledge of it till filed in the Court. There is nothing in the evidence of petitioner to show that he gave Ex. M2 option without knowing its contents or under fistaken impression or under coercion simply because Ex. M1 circular does not contain provision for withdrawing option once given, it cannot be said to be invalid. The circular merely says that staff willing for conversion, as computer operator can exercise option in the proforma enclosed and posting will be given as per zonal seniority. Thus the circular gives discretion to staff to exercise option or not, The petitioner willing exercised to option by signing in Ex. M2. Hence it cannot be said to be Hobson's choice. If the petitioner is not willing for conversion as computer operator there is no need or compulsion for him to fill up dotted lines in Ex. M2. The petitioner admittedly has choice either to give or not to give option. It is not a case of inequality in bargaining as was held in AIR 1968 SC 1571. Hence I find no reason to hold that Ex. M1 and M2 are invalid documents. I am also unable to agree with the contention of petitioner that Ex. W1 is only an offer which can be rejected by the petitioner at any time inspite of filing Ex. M2. He can definitely withdraw his option within time prescribed in Ex. M3 circular persons who have withdrawn their option within time are permitted to do so. But in this case the petitioner withdrew his option only on 27-10-98 admittedly after coming to know of Ex. W1 order as per his own showing. I therefore find no cogent ground to hold that Ex. M2 option form obtained from the petitioner is void, as the same was given by the petitioner out of his own and face volition.

18. I am also of the view that his posting to Cuddapah as computer operator cannot be said to be invalid as it is based on Ex. M2 option, given by him, while he has admittedly gave Ex. W2 relinquishment letter after Ex. W1 orders are issued. It is probable having come to know about posting, he refused to receive Ex. W1 order as otherwise there is no need for him to give Ex. W2 relinquishment letter and hence it was sent by post as borne out by Ex. M5 returned cover. The authority could not obtain the signature of petitioner in Ex. W1 as it could not be tendered personally as in the case of Ex. W5 and W7. I am of the view that simply because the petitioner was posted to Cuddapah, it cannot be said that it is a case of victimisation for raising dispute in I.D. No. 6/98. It is quite probable that having come to know about his posting to Cuddapah and to avoid the same, petitioner gave Ex. W2 relinquishment letter or revocation letter, I am unable to accept that it is a case of offer of appointment and rejection by the employee as sought to be contended by the learned counsel. I am of the view that decision reported in 1994 I.LR 414 of Delhi High Court (Raghubir Singh Vs. Municipal Corporation of Delhi) as well as decision reported in 1962(2) FLR 449 S. K. Mutalik Vs. Union Bank of Bijapur have no bearing on the facts of this case though there can be no quarrel with regard to principle of law laid down there in.

19. I am unable to accept the contention of the petitioner that respondent indulged in unfair labour practice by posting the petitioner as computer operator at Cuddapah. I therefore hold that there is nothing illegal in Ex. W1 order posting the petitioner as computer operator at Cuddapah as the petitioner is not disputing the right of the employer to transfer the employee from one place to another.

20. It also urged that the counter cannot be received and looked into as there is no proper verification. I find no merit in this contention as it is purely of technical nature.

21. Hence I answer this point against petitioner holding that no case is made out to hold that either Ex. M1 or M2 are void and transfer of petitioner as computer operator to Cuddapah is colourable exercise of authority.

22. POINT NO. 3 : In view of my finding on point No. 1 and 2, I am of the view that the petitioner has to fail.

23. In the result the petition is dismissed without cost. The respondent is however directed to consider Ex. W2 relinquishment letter given by the petitioner as he is not willing to work as computer operator and his request for retention at Vetapalam if it is permissible.

Written and passed by me in open Court on this the 28th day of May, 1999.

C. V. RAGHAVAIAH, Industrial Tribunal-I

Appendix of Evidence

Witness Examined for Petitioner : Witness examined for the Respondent :

WW1 : T. Venkateswarlu MW1 : Y. Nagaraj

Documents marked for the Petitioner:

Ex. W1 Copy of appointment order dt. 27-10-98 appointing WW1 as computer operator and posting him at Cuddapah Branch.

Ex. W2 Relinquishment letter dt. 27-10-98 given by WW1 to the post of appointment computer operator.

Ex. W3 Letter dt. 28-10-98 given by WW1 requesting branch manager to permit him to join duty at Vetapalem Branch.

Ex. W4 Proceedings dt. 13-1-99 before the A.L.C.

Ex. W5 Letter dt. 26-6-98 addressed by the branch manager to the petitioner for attending the posting Jr. Manager Grade Scale-I to be held on 28-6-98.

Ex. W6 Circular dt. 11-5-98 issuing by the Chief Manager issuing to WW1 for attending exam on 17-5-98.

Ex. W7 Xerox copy of relieving order issuing to WW1 transferring him Tangutur to Ongole branch.

Documents marked for the Respondent:

Ex. M1 Circular dt. 20-01-98 Lr. No. LHO|CDO|PER|71|97-98 regarding option for appointment of Computer Operator.

Ex. M2 Option letter dt. 29-1-98 given by WW1 to seek conversion as computer operator in pursuance of Ex. M1.

Ex. M3 Circular dt. 14-5-98 issued by the management regarding revoke the option.

Ex. M4 Circular dt. 2-2-98 issued by Zonal Office Tirupathi calling for options from the clerical and cash department staff for appointment as computer operator.

Ex. M5 Returned cover addressed to the Petitioner (WW1).

नई दिल्ली, 22 जुलाई 1999

का.आ. 2320:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया तिरुपति के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-I, हैदराबाद के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 21-7-1999 को प्राप्त हुआ था ।

[सं. एल-12012/141/97-आई.आर. (बी. 1)]
जी. रॉय, डैस्क अधिकारी

New Delhi, the 22nd July, 1999

S.O. 2320.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-I, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India Tirupathi and their workman, which was received by the Central Government on 21-7-199.

[No. L-12012|141|97-IR(B-I)]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

Present :

Sri C. V. Raghavaiah, B.Sc.,B.L., Industrial Tribunal-I.

Dated : 28th Day of May, 1999

INDUSTRIAL DISPUTE NO. 6 OF 1998

BETWEEN

The General Secretary,
State Bank Employees Union,
Peddibotlavary Street,
Governerpet,
Vijaywada-520 002. .. Petitioner

AND

The Asstt. General Manager (Law)
State Bank of India,
Zonal Office, Region-I,
Tirupathi. .. Respondent

Appearances :

Sri C. Suryanarayana, Advocate for the petitioner.
Sri B. G. Ravindra Reddy, Advocate for the Respondent.

AWARD

The Government of India Ministry of Labour New Delhi by its order dt. 13-4-1998 in No. L-12012|141|97 IR (BI) referred the following dispute for adjudication to this Tribunal U/ [illegible](d) and subsection (2A) of I.D. Act 1947.

"Whether the action of the management in transferring Sri T. Venkateswarlu Teller, SBI Ongole Branch for his alleged participation in strike on 17-2-1994 called by AIBEA and with holding his wages for the delay in reporting at New Station is justified? If not, to what relief he is entitled for?"

The reference was taken on file and numbered as above. On being served with notices of reference both the parties made their appearances through counsel and filed respective pleadings.

2. The case of the petitioner/workman as per the claim statement filed by the General Secretary of the petitioner union briefly stated is as follows : The workman T. Venkateswarlu is working as Teller in the respondent Bank. He is member of the petitioner union. Which is affiliated to All India Bank Employees Association but not recognised by the respondent. Pursuant to strike call given by All India Bank Employees Association the workman Venkateswarlu while working in Ongole Branch participated in strike on 17-2-1994. He was placed under suspension on 18-2-1994 and served with charge sheet dt. 21-2-1994. Enquiry was held and the charge was held to have been proved. The disciplinary authority issued 2nd show cause notice dt. 16-9-94 giving 14 days time for workman to appear before him and show cause against punishment of 'warning' later final order dt. 16-9-1994 was passed ordering reinstatement into service from the date of reporting for duty as Teller at Vetapalem Branch and treating the period of suspension from 18-2-94 till the date of reporting for duty at Vetapalem as 'not' on duty. According to the petitioner union the final order is not in accordance with the 2nd show cause notice against proposed punishment as the disciplinary authority inflicted transfer by ordering reinstatement at Vetapalem. It is contended that transfer was inflicted as condition precedent for reinstatement and the workman was forced to report for duty at new station under threat of no wages in case of delay in reporting to duty. The workman could not report at new station as he preferred an application to the disciplinary authority for personal hearing and awaiting reply.

While so on 20-10-94 the workman received order dt. 11-10-94 signed by Asstt. General Manager Region-I modifying 'warning' to 'Warn' vom caution and treating suspension period from 18-2-94 to 16-9-94 referred to in the earlier order dt. 16-9-94 as on duty and extending all other attendant benefits and on the same day the workman reported for duty at Ongole Branch assuming that the transfer from Ongole branch was superceded by the later order but he was directed to report for duty at Vetapalem branch. The workman made representation to Asstt. General Manager Region-I but did not got any reply. Hence he preferred appeal to the appellate authority and pending the same the workman reported for duty on 5-11-94 at Vetapalem. But he was not paid wages for the period he could not report for duty at the new station. Further even subsistance allowance paid from 16-9-1994 to 30-9-1994 was also recovered.

It is contended further that as the suspension order could not be supported by the out come of enquiry, the respondent resorted to transfer to victimise that workman as he belonged to the petitioner union and participated in the strike called by AIBEA. According to the petitioner the respondent acted malafide as both disciplinary and administrative measures were abused in transfering the workman from Ongole branch to Vetapalem branch which is a case of colourable exercise of power as such not justified. The respondent came up with the theory that transfer was effected on administrative grounds as his continuation at Ongole branch is prejudicial to the interests of the bank and that transfer cannot be subject matter of industrial dispute at the time of conciliation proceedings though the order dated 16-9-94 is not only conditional but also punitive in nature and the appellate authority dismissed the appeal of the workman on the ground that order appealed calls for no interference without considering the various points raised by the workman as such the action of respondent in transfering the workman to Vetapalem and not paying wages from 16-9-94 to 4-11-94 is not justified being unfair labour practice and motivated.

The petitioner thus prayed for passing an award declaring that the action of management of SBI regional office Tirupathi Zonal office in transfering the workman Sri Venkateswarlu from Ongole Branch to Vetapalem Branch as a measure of punishment and in refusing to pay wages is not justified and malafide as the same amount to unfair labour practice and victimisation.

3. The respondent filed a counter resisting the claim statement. It contended that reference itself is invalid for the reason that the government presumed that management transferred the workman for participating in the strike on 17-2-94 and treating the transfer as dispute for adjudication though the transfer was effected on administrative exigencies. According to it pursuant to strike call given by AIBEA the workman along with others entered the premises of Bank at Ongole branch on 17-2-94 and instigated the staff on duty to leave the premises and created disorderly scene for which he was placed under suspension from 18-2-94 followed by chargesheet, enquiry, and order dated 16-9-94 by the disciplinary authority taking linient view of the matter in view of the satisfactory record of the workman. It is contended that Asst. General Manager as controlling authority besides being disciplinary authority, ordered transfer of the workman on administrative exigencies. Thus, according to the respondent the disciplinary authority never ordered for the transfer of the workmen but it was ordered by the controlling authority as the workman indulged in unruly behaviour at Ongole branch and as it was felt that his transfer will facilitate smooth conduct of work at Ongole branch. But consequent to personal hearing on 6-10-94 the disciplinary authority passed the order dated 11-10-94 confirming the punishment of warning and treating the period of suspension from 18-2-94 to 16-9-94 as on duty making him eligible for all attendant benefits. It also contended that as the workman reported for duty at Vetapalem on 5-11-94 he is not entitled for wages from the date of order of reinstatement till the date of reporting to duty i.e. from 16-9-94 to 4-11-94 as he has not chosen to report for duty at his new place of posting and did not work on his volition. It thus, contended that claim of the workmen for wages for the above period is untenable on

the principle of no work no pay. It denied that the workman was inflicted punishment of transfer as against punishment of warning proposed in the show cause notice. According to the respondent the workman was reinstated into service and posted to Vetapalem.

It also contended that it is justified in effecting recovery of subsistance allowance as he was not under suspension from 16-9-94 to 30-9-94. The respondent contended that workman cannot have any grievance as lenient view of the misconduct was taken and suspension period treated as duty period after personal hearing and as his posting to Vetapalem is for administrative reasons and as transfer is an incident of service as per decided authorities. It thus denied that action of management in transferring the workman is malafide, motivated and amounted to unfair labour practice. It has also denied that transfer is part of disciplinary proceedings and inflicted as punishment. It denied that without considering all the questions raised by the workman the appellate authority dismissed the appeal and there is an ambiguity in the order dated 11-10-94 hence the petitioner sought for clarification and for that reason there was delay in reporting for duty at Vetapalem. It thus, asserted that posting of the workman to Vetapalem is not for participation in strike but for administrative reasons and as he has deliberately did not join at Vetapalem till dated 5-11-94. He is not entitled to wages from 16-9-94 to 4-11-94. The respondent thus prayed for rejecting the reference as the workman is not entitled to any of the reliefs prayed for.

4. On the above contentions the following points arise for adjudication.

1. Whether the workman Sri T. Venkateswarlu was transferred to Vetapalem branch from Ongole branch by way of punishment for participating in the strike call given by AIBEA or for administrative grounds ?

2. Whether the workman is entitled to wages for the period from 16-9-94 to 4-11-94 which was denied to him on the principle of no work no pay ?

3. To what relief ?

5. In support of petition averments the concerned workman Sri T. Venkateswarlu examined himself as WW1 and filed Ex.W1 personal submission dated 6-10-94 made by him to the respondent regarding the proposed punishment of warning Ex.W2 joining report dated 20-10-94 given by him at the Ongole branch of SBI Ex.W3 representation dated 28-10-94 sent by him to Asst. General Manager Region-I Tirupathi Ex.W4 order dated 18-2-94 passed by Asst. General Manager-cum-disciplinary authority placing the workman under suspension from 18-2-94, Ex.W5 order dated 13-3-95 passed by the appellate authority administrative 'warning' to WW1 and Ex.W6 grounds of appeal dated 25-11-94 submitted to the appeallate authority by WW1.

The respondent examined Sri Y. Nagaraj Manager Personal and HRD working at Tirupathi as MW1 and marked Ex.M1 letter dated 21-2-94 of Asst. General Manager Regional-I and disciplinary authority forwarding Ex.M2 charge sheet to WW1 workman. Ex.M3 and M4 proceeding of domestic enquiry held on 21-2-94 and 3-8-94 respectively, Ex.M5 letter dated 12-8-94 addressed by enquiry officer to disciplinary authority forwarding copy of Ex.M3 and M4 enquiry proceedings and Ex.M6 enquiry report dated 12-8-94. Ex.M7 show cause notice dated 16-9-94 regarding proposed punishment of warning and giving opportunity for personal hearing regarding the same in terms of Sastri Award, Ex.M8 reinstatement order dated 16-9-94, Ex.M9 order dated 11-10-94 treating the suspension period as 'on duty' Ex.M10 letter dated 15-11-96 addressed by the petitioner union to Asst. Labour Commissioner for intervention, Ex.M11 counter dated 23-11-96 given by respondent before ALC Ex.M12 xerox copy of conciliation proceedings held on 4-2-97. ExM15 extract of Sastry's Award Ex.M16 extract of VI Bipertite settlement dated 14-2-98. Ex.M15 xerox copy of circular no. 23 regarding request transfer policy Ex.M16 extract of rules of conduct for the employees of SBI and Ex. M17 xerox copy of TA bill of Sri G.S.V. Subha Rao AGM claiming TA for his visit to Chirala and Vetapalem branches. It was marked on the request of the petitioner union to show the disciplinary authority was not at Tirupati on the date of passing Ex.W4 order of suspension. Further both the counsel filed written arguments.

6. POINT NO. 1 : The factual matrix of the case in brief is as follows : The workman Sri T. Venkateswarlu examined as WW1 who is a member of the petitioner union which is not a recognised union, while working as Teller in Ongole branch of SBI participated in strike on 17-2-94 pursuant to the call given by AIBEA. He was placed under suspension with effect from 18-2-94 under Ex W4 Ex. M2 charge sheet was forwarded to him by the disciplinary authority under Ex.M1 covering letter, Domestic enquiry was held on 21-2-94 and 3-8-94 as borne out by Ex. M3 and 4 proceedings and the same was forwarded to disciplinary authority by enquiry officer under cover of Ex. M5 letter along with Ex. M6 enquiry report. The enquiry officer concluded that charge No. 1 levelled against WW1 are proved and gave benefit of doubt in respect of other two charges. The disciplinary authority accepted the report of the enquiry officer on re-analysis of evidence on record. He sent Ex.M7 show cause notice to workman with regard to proposed punishment of warning and to treat suspension period as 'not on duty' and giving him 14 days time, for personal hearing. On the same day i.e. 16-9-94 he passed Ex. M8 order of reinstatement and posting WW1 to Vetapalem branch. The workman submitted Ex. W1 personal hearing representation dated 6-10-94. Thereafter the disciplinary authority i.e. Asst. General Manager Regional-I Tirupati who is also the controlling authority for WW1 passed Ex. M9 order dated 11-10-94 warning WW1 to be more caution in future and treating the period of suspension as 'on duty'. Thereupon WW1 reported for duty of Ongole branch on 20-10-94 as borne out by Ex. W2 instead of a Vetapalem branch. He also sent Ex.W3 representation dated 28-10-94 to the Asst. General Manager Region-I Tirupati; WW1 thereafter reported for duty at Vetapalem branch on 5-11-94 but not paid wages from 16-9-94 to 4-11-94 He was paid subsistance allowance from 18-2-94 to 30-9-94 but it was recovered later for the period from 16-9-94 to 30-9-94 while salary paid from 18-2-94 to 15-3-94.

7. The workman preferred Ex. W6 gorunds of appeal to the appellate authority with regard to his transfer to Vetapalem under Ex.M8 order. Whereupon the appellate authority passed Ex. W5 order dt. 13-3-95 administering 'administrative warning'. Aggrieved by the order of transfer and as wages not paid from 16-9-94 to 4-11-94 to WW1, the petitioner union took up his cause by approaching Asst. Labour Commissioner to interfere in the matter as born out by Ex. M10 dt. 15-4-96 followed by Ex. M11 counter dt. 23-11-96 by the respondent. The proceedings however, ended in failure as borne out by Ex.M12 leading to this reference.

8. As per transfer policy of the respondent the WW1 is transferable from one place to another. Ex. M13 is the extract of Sastri Award while Ex. M14 extract of 6th Bipertite settlement, as per which administration of 'warning' is also punishment indisciplinary proceedings Ex. M15 is circular regarding transfer on request while Ex. M16 is extract of rules of conduct for the employees of the Bank as per which employees under take to work at any place.

9. It is contended on behalf of the petitioner that as the workman WW1 participated in strike on 17-2-94 while working at Ongole branch pursuant to strike call given by AIBEA to which the petitioner union which is not recognised by SBI is affiliated and of which WW1 is one of the executive committee member, he was illegally placed under suspension under Ex. W14 at the instance of leaders of recognised union, that he was served with Ex. M2 charge sheet that a false domestic enquiry was ordered and held as borne out Ex.M3 and M4 proceeding that the enquiry officer gave perverse finding that WW1 is guilty of charge No. 1 though the same is not supported by any acceptance evidence, but on the basis of leading and mischievous question put to the witnesses examined at the time of domestic enquiry, that the Asst. General Manager Region-I Tirupathi accepted the above finding without applying his mind, and inflicted punishment of transfer from Ongole to Vetapalem on WW1 under Ex. M8 as against the punishment of warning proposed in Ex. M7 show cause notice to which WW1 sent Ex. M1 representation. According to the learned counsel as WW1 was ordered to be reinstored after completion of departmental enquiry, he should have been posted at Ongole itself as the dictionary meaning of the word 'reinstatement' shows restoring status quo ante both as to the post and place of appointment. The learned counsel thus contends that by way of victimisation WW1 was awarded punishment of transfer after conclusion of disciplinary proceedings while ordering reinstatement by adducing raider that the period of suspension will be treated as not on duty till he reported to duty at Vetapalem.

10. The learned counsel for petitioner thus contended that action of management is illegal and unjustified as it is motivated and indulged in unlabour practice by inflicting punishment of transfer for participating in trade union activity and the plea of the respondent that WW1 was transferred on administrative ground but not by way of punishment is untenable, as Ex M8 is silent on this aspect and it came up with the said plea by way of after thought to justify its illegal action. It is thus contended that entire disciplinary proceeding is vitiated. The learned counsel placed reliance on decision of Apex Court in Kuldeep Singh Vs. The Commissioner of Police 1998(6) SCALE 588.

11. The learned counsel for the respondent however contended that argument of the petitioner's counsel that enquiry proceedings are vitiated, that the finding of the enquiry officer is perverse and that disciplinary authority did not apply its mind in accepting the finding of the enquiry officer and punishment of warning given to WW1 is illegal, is untenable as the same is not based either on claim statement or evidence placed on record by either side as not even suggestion made to MW1 that enquiry proceedings vitiated and on the other hand most of the respondent documents are marked by WW1 himself in his chief examination itself.

12. He further contended that for the misconduct proved WW1 was given Ex. M7 notice to show cause for the proposed punishment of warning and to treat the period of suspension as not on duty for which WW1 sent Ex.W2 representation and after giving opportunity of personal hearing Ex. M9 final order dated 11-10-94 was passed inflicting punishment of warning on WW1 to be careful in future and treating period of suspension 'as duty' period by taking lenient view having regard to his young age and earlier record as provided under Ex.M13 and M14, that in view of Ex. M7 show cause notice the disciplinary authority who also happened to be controlling authority passed Ex. M8 order of reinstatement revoking suspension and posted WW1 to Vetapalem on administrative grounds. He thus contended, that transfer is condition of service as borne out by Ex. M16 and admitted by WW1, cannot be subject matter of industrial dispute and WW1 was not transfered by way of punishment for participating in strike call given by unrecognised union. He further contended that reinstatement would only mean reinstatement into service in the same post but not to the same plea as no employee has right to seek posting at the place of his choice. He thus contended that Ex. M8 is not part of disciplinary proceedings but an order passed in view of administrative exigency and it is not motivated. Hence there is no question of victimisation of unlabour practice.

13. On a careful consideration of the material placed on record i.e. pleadings and evidence of the parties I am of the view that contention of the petitioner with regard to validity of domestic enquiry, finding of the enquiry officer and acceptance of the same by the disciplinary authority and awarding for administering warning by the disciplinary authority and appellate authority on the basis of Ex. M6 report of enquiry officer are untenable and cannot be entertained at the stage of argument in the absence of necessary pleadings though they have been elaborately mentioned in the written arguments filed by the learned counsel of the petitioner. There can be however no quarrel with regard to principle of law laid down in the authority cited above.

14 Coming to the question whether WW1 was transfered by way of punishment after conclusion of disciplinary proceedings or for administrative reasons, we have only the conflicting oral and interested testimony of affected worker as WW1

and Manager personnel examined as WW1, while WW1 deposed that he was inflicted punishment of transfer after conclusion of disciplinary proceedings while ordering reinstatement under Ex. M8 for participating in the strike on 17-2-94. MWT deposed that he was transferred on administrative grounds but not by way of punishment as WW1 was inflicted punishment of 'warning to be careful' after conclusion of disciplinary proceedings under Ex. M9. Final order besides treating the period of suspension as on duty taking lenient view of the matter. Thus, it is a case of Oath against Oath as neither side examined any other witness to corroborate their oral statement.

15. Hence we have see the surrounding circumstances and documentary evidence placed on record to know whether WW1 was transfered to Vetapalem from Ongole by way of punishment after conclusion of disciplinary proceedings. Admittedly the Asst. Manager Region-I Tirupati is both the disciplinary authority and controlling authority for WW1 in this case. For participating in the strike on 17-2-94 and for indulging in alleged acts of instigating the employees on duty to leave the office, etc., activity WW1 was placed under suspension with effect from 18-2-94 under Ex. W4. The said order was signed by the Asstt. Manager Region-I Tirupati by name Sri G. S. V. Subba Rao. But as per Ex. M17 T.A. Bill, it would appear he was not at Tirupati from 17-2-94 6.00 p.m. to 21-2-94 10.00 A.M. But the said circumstance in my view would not either vitiate or make Ex. W4 order illegal. I am unable to accept to contention of he learned counsel in the written argument Ex. W4 is forged order on the ground that it was not signed or issued from Tirupati.

16. The fact however remains that WW1 was placed under suspension vide Ex. W4 order thereafter Ex. M2 charge sheet was forwarded to WW1 by the disciplinary authority under cover Ex. M1 letter. As many as 3 charges are levelled against WW1 in Ex. M2 charge sheet. Admittedly departmental enquiry was held in which WW1 participated and he seems to have raised same preliminary objections before the enquiry. The enquiry officer submitted Ex. M3 and M4 proceedings and Ex. M6 enquiry report to the disciplinary authority under cover of Ex. M5 letter. As per Ex. M6 report only one charge was held to have been proved against WW1. In the written arguments the evidence of witness examined by the enquiry officer with regard to this charge was attacked but no foundation laid either in the pleading or evidence. In fact validity of enquiry proceedings not challenged in the claim statement. Having accepted the finding of the enquiry officer, the disciplinary authority sent Ex. M7 order or letter or 2nd show cause notice in what ever name, it may be called on dated 16-9-94 directing the WW1 to show cause for proposed punishment of warning and for treating suspension period 'not on duty' and gave 14 days time for personal hearing. Thus opportunity of personal hearing with regard to nature and quantum of proposed punishment given to WW1 as required under rules. WW1 availed the said opportunity and submitted Ex. W1 representation. After hearing the WW1 personally the disciplinary authority passed final order Ex. M9 dated 11-10-94 imposing punishment of warned to be careful in future and treating the suspension period as 'on duty' taking into consideration age and past records of the WW1 and he was given all other benefits to which is entitled. Of course on the date of Ex. M7 show cause notice itself, Ex. M8 order of reinstatement and posting WW1 to Vetapalem was passed with condition, that till he reports to duty at his new station the suspension period will be treated as 'not on duty'. It is also true that it is not mentioned i.e. Ex. M8 that said transfer was affected on administrative grounds. It is further mentioned that after conclusion of disciplinary proceedings it is decided to reinstate him into service.

17. As Ex. M7 and M8 are of the same date, the learned counsel for the petitioner vehimently contended that WW1 was transferred to Vetapalem by way of punishment contrary to the nature of punishment proposed in Ex. M7 and giving opportunity of personal hearing under Ex. M7 is only farce as the authority have already inflicted punishment after conclusion of disciplinary proceedings by transfering WW1 to Vetapalem which is however repelled by the other side.

18. I find no merit in the contention of the learned counsel for the petitioner on careful consideration of Ex. M7, M9 and M8 simply because Ex. M7 and M8 orders are passed on the same date by the same person it cannot be said that after conclusion of disciplinary proceedings transfer was inflicted on WW1 as a punishment or by way of vindictiveness for participating in the strike. As stated above under Ex. M7 punishment proposed is warning and to treat suspension period 'as not on duty' WW1 was given an opportunity of personal hearing within 14 days from the date of receipt of said order. WW1 infact appeared for personal heaing and submitted Ex. W1 representation dt. 6-10-94. After considering the same and representation made at the time of personal hearing, the disciplinary authority passed the final order Ex. M9 on 11-10-94 as per which the WW1 was warned to be careful in future and period of suspension was treated as on duty. Admittedly warning is one of the punishment provided under Ex. M13 Sastri Award and Ex.M14 Bipartite settlement dt. 4-2-98 for minor misconduct, the same was conferred on appeal by the appellate authority under Ex.W5. Hence there can be no doubt that after completion of disciplinary proceedings the WW1 was awarded punishment of warning as proposed in Ex. M7 but the suspension period is treated as on duty. Hence as observed above merely because Ex. M8 order of reinstatement and posting was passed on 16-9-94 simultaneously along with Ex. W7 show cause notice of proposed punishment, it can be said that WW1 was awarded punishment of transfer for participating in strike as against the punishment proposed in Ex. M7. As enquiry proceedings came to an end by issuing notice the controlling authority seems to have felt that it is no longer necessary to keep the WW1 under suspension and posting can be given to him by reinstating him into service as proposed punishment is a minor one.

19. In this view of the matter it appears to have been mentioned in Ex. M8, that consequent upon conclusion of disciplinary proceedings, it has been decided

to reinstate him and give him posting. It is in evidence that Ex. M8 order was passed by the Asst. General Manager Region-I Zonal Office Tirupathi in his capacity as continuing authority, simply because in Ex. M8 he is described as disciplinary authority it can not be inferred that he passed the said order of transfer by way of punishment. As stated above Ex. M9 final order was passed with regard to charge proved against WW1 i.e. warning him to be careful in future. Thus it is obvious while Ex. M8 order was passed as controlling authority Ex. M7 and M9 are passed by the same official as disciplinary authority. It lead to the present controversy as the same person discharges dual rules.

20. I am of the view that simply because WW1 was not reposted at Ongole after conclusion of disciplinary proceedings while ordering reinstatement it cannot be said that he was transferred by way of punishment for participating in strike for which already punishment of warning was proposed under Ex. M7 and administered under Ex. M9 final order. There can be no doubt that authorities can transfer any employee on administrative exigency as rightly admitted by WW1 and the employee has not right to demand that he should be retained in the same place on reinstatement. He cannot be reported the same place in the absence of vacancy. Simply because there are juniors to WW1 at Ongole branch and there are long standing candidates in that branch but they are not transferred while WW1 was posted to Vetapalem from Ongole branch, it cannot be inferred that the action of controlling authority is motivated and he acted in a vindictive manner or indulged in unlabour practice. When a lenient view was taken with regard to punishment for the alleged misconduct, it is difficult to believe that controlling authority thought of punishing WW1 by way of transfer from Ongole to Vetapalem.

21. Hence having regard to Ex. M9 final order of punishment that was passed by the disciplinary authority. I am of the view that Ex. M8 order of reinstatement and posting WW1 to Vetapalem instead of reposting him at Ongole itself cannot be treated as part of disciplinary proceedings and transfer was affected by way of punishment. I am of the view that request transfer proceedings circular Ex. M15 has no relevancy as it is not case of request transfer. I am of the view that simply because in Ex. M8 order it was not mentioned that he is posted to Vetapalem after deciding to reinstate him, due to administrative exigency it cannot be said that the respondent come up with the above plea as an after thought or to justify the posting of WW1 as Teller at Vetapalem. As deposed by MW1 it may be depending on staff requirement and taking into consideration other administrative exigency, the authorities felt it that WW1 should be posted to Vetapalem which is near by place than to retain him at Ongole Branch. As the request of WW1 to retain him at Ongole branch on reinstatement was not considered, the workman appears to have come up with the plea that he was transferred to Vetapalem by way of punishment after conclusion of disciplinary proceedings though he was administered warning for his misconduct in respect of which he was placed under suspension followed by demestic enquiry.

22. Hence having regard to the fact, and circumstances appearing in the case and Ex. M7 to 9 which are the crucial documents in the case I conclude that transfer of WW1 to Vetapalem is not motivated or inflicted by way of punishment or victimisation for participating in the strike on 17-2-94 but only for administrative exigency as pleaded by the respondent. Transfer is an incidence of service and cannot be subject matter of reference unless the same is done with malafide intension. Hence I answer this point against the workman.

23. POINT No. 2 : This deals with the 2nd part of reference i.e. non payment of wages from 16-9-94 to 4-11-94 Admittedly WW1 reported for duty at Vetapalem pursuant to Ex. M8 order only on 5-11-94 and he was not paid wages from 16-9-94 to 4-11-94 on the ground of no work no pay.

24. It is contended on behalf of the workman that the alleged delay in reporting duty at Vetapalem if any was due to non conclusion of disciplinary proceedings as it is mentioned in Ex. M9 final order that WW1 is under suspension even by 11-10-94. It is stated that WW1 submitted Ex. W3 representation dtd. 28-10-94 after receipt of Ex. M9 order which is silent about Ex. M8 order and as Ongole Branch Manager refused to permit him to join when he gave Ex. W2 joining report. It is submitted that as WW1 was under bonafide impression that Ex. M8 order will be rescinded and he will be retained at Ongole in view of the fact that it is shown in Ex. M9 that he is still under suspension, there is no lapse on the part of the workman in reporting to duty as such he is entitled for wages from 16-9-94 to 4-11-94.

25. The learned counsel for the respondent however contended that workman deliberately did not reported for duty at Vetapalem till 5-11-94 and as he did not work from 16-9-1994 at any branch he is not eligible for wages from 16-9-94 on which date reinstatement order was passed and till 4-11-94 as he reported for duty only on 5-11-94.

26. On a careful consideration of the evidence on record I find some force in the contention of the workman, WW1 has deposed that he was under bonafide impression that he is still under suspension as mentioned in Ex. M9 order though as per Ex. M8 order dt. 16-9-94 he was reinstated. He also stated that he gave Ex. W1 and W3 representations for his retention at Ongole on reinstatement and awaiting favourable orders.

27. MW1 on the other hand deposed as WW1 did not report for duty till 5-11-94 he is not entitled to wages. He however admitted that WW1 was served with Ex. M8 order of reinstatement only on 21-9-94, that it is mentioned in Ex. M9 final order that WW1 is under suspension and whenever a letter is addressed to an employee describing 'as under suspension' he is deemed to be under suspeusion. He however added that as WW1 did not report for duty at Vetapalem it, was mentioned in Ex. M9 order or letter 'under suspension'. Hence there is nothing improbable if WW1 bonafide believed that he is still under suspension as described in Ex. M9 order dt. 11-10-94 though as per Ex. M8 order dt. 16-9-94 he was ordered to reinstate on his reporting for duty at Vetapalem.

28. Further a perusal of Ex. M7 would show besides disputing the legality of proposed punishment he sought for retention at Ongole. After receipt of Ex. M9 order the workman infact reported at Ongole branch on 20-10-94 by presenting Ex. W2 joining report. But he was not permitted to join. As there is no reference to Ex. M8 order in Ex. M9 final order, it is quite probable that he was under impression that Ex. M8 order was superceded and he was reinstated into service at Ongole only. It is only after Ongole branch manager refused to permit him to join at that branch he come to know that Ex. M8 order was still inforce and hence he gave Ex. W3 representation. It is probable that he expected favourable reply for Ex. W3 and after waiting for reasonable period, he would have reported for duty at Vetapalem on 5-11-94. Hence it cannot be said that lapse is entirely on the part of WW1 in not reporting for duty at Vetapalem till 5-11-94. As no final order was passed pursuant to Ex. M7, 2nd show cause notice though Ex. M8 reinstatement order was passed on 16-9-94, it is quite probable that WW1 felt that at the time of passing final order, Ex. M8 order will be cancelled and he will be retained at Ongole.

29. Further curiously it is mentioned in Ex. M9 final order that he is still under suspension which would also go to show that disciplinary proceedings are not yet completed and the authorities are also treating as if WW1 is under suspension even on 11-10-94. I am of the view that if there is any delay in reporting for duty it can be only from 20-10-94 on which date he was informed by Ongole branch manager that he has to join at Vetapalem. As authorities felt that even by the date of Ex. M9 that WW1 is under suspension it is probable this addressed him as employee under suspension I am of the view that the said period from 16-9-94 to 20-10-94 also has to be treated as duty period. So if at all wages have to be refused it is only from 20-10-94 to 4-11-94 but not from 16-9-94 as done by the respondent as there is lapse on its part also in showing in Ex. M9 that WW1 is under suspension and not referring in Ex. M9 order about Ex. M8 order dated 16-9-94 and not giving reply to the representation made by the workman for his retention at Ongole itself. Hence this point is answered partly in favour of the petitioner.

30. POINT NO. 3 : In view of my finding on point 1 and 2 I am of the view the reference has to be answered partly in favour of the workman.

31. In the result the reference is answered as follows :

Award is passed by holding that transfer of WW1 to Vetapalem is not by way of punishment for participating in the strike on 17-2-94 but for administrative reason and it is neither motivated nor by way of victimisation and that respondent is however is not justified in not paying wages from 16-9-94 to 4-11-94 and at best it can deny wages on the principle of no work no pay from 20-10-94 to 4-11-94.

Written and passed by me this 28th day of May 1999.

C. V. RAGHAVAIAH, Industrial Tribunal

Appendix evidence

Witness examine for the petitioner	Witness examined for the respondent
WW1 : T. Venkateswarlu	MW1 : Y. Nagaraj

Documents marked for the petitioner

Ex. W1 : Personnel submission dated 6-10-94 made by WW1 to the respondent regarding by order of proposed punishment of warning.

Ex. W2 : Joining report dated 20-10-94 submitting by WW1 at Ongole branch of SBI.

Ex. W3 : Representation submitting dated 28-10-94 by WW1 to the Asst. General Manager Region-I Tirupathi.

Ex. W4 : Order dated 18-2-94 passed by AGM, Disciplinary authority placing WW1 under suspension from 18-2-94.

Ex. W5 : Order dated 13-3-95 passed by the Appellate authority Administering Administrative Warning to WW1.

Ex. W6 : Grounds of Appeal dated 25-11-94 submitting by WW1 to the Appellate Authority SBI Zonal Office Tirupathi .

Documents marked for the Respondent

Ex. M1 : Letter dated 21-2-94 of the Assistant General Manager Region-I as disciplinary authority addressed to the petitioner through the Branch Manager forwarding charge sheet issued to WW1.

Ex. M2 : Charge sheet dated 212-94 issued to WW1.

Ex. M3 : Proceedings of domestic Enquiry conducting against the workman held on 21-2-94 (xerox copy).

Ex. M4 : Proceedings of Domestic Enquiry held on 3-8-94.

Ex. M5 : Letter dated 12-8-94 addressed by enquiry officer to Disciplinary Authority copy of the proceedings of enquiry conducted against WW1.

Ex. M6 : Enquiry report dated 12-8-94.

Ex. M7 : Warning letter dated 16-9-94 given to the petitioner worker.

Ex. M8 : Reinstatement order dated 16-9-94 issued by the management to the petitioner.

Ex. M9 : Order dated 11-10-94 issued to the WW1 treating the suspension as on duty.

Ex. M10 : Letter dated 15-4-96 addressing by the union to ACL for information of the ACL in the dispute.

Ex. M11 : Counter dated 23-11-96 filed by respondent before ACL.

Ex. M12 : Xerox copy of conciliation proceedings held on 4-2-97 before ALC(C) Vijayawada.

Ex. M13 : Extract of Shastri Award.

Ex. M14 : Extract of 6th Bipartite settlement dated 14-2-95.

Ex. M15 : Xerox copy of circular dated 22-3-90 Lr No. 23 regarding request Transfer Policy.

Ex. M16 : Extract of Rules of conduct for the employees of SBI.

Ex. M17 : Xerox Copy Bill of Sri G.S.V. Subba Rao AGM his visits to Chirala and Vetapalem Branches.

नई दिल्ली, 22 जुलाई, 1999

का.आ. 2321:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रेलवे इलैक्ट्रिफिकेशन, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-1999 को प्राप्त हुआ था।

[सं. एल-41012/11/91-आई.आर. (डीय)/बी. I]
जी. राय, डैस्क अधिकारी

New Delhi, the 22nd July, 1999

S.O. 2321.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Rly. Electrification, Bhopal and their workman, which was received by the Central Government on 21-07-1999.

[No. L-41012/11/91-IR(DU)/B. I]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Shri D. N. Dixit, Presiding Officer.

Case No. CGIT-LC/R/160/91

Dy. Controller of Stores,
Rly. Electrification,
Bhopal. .. Management

Vs.

Rajaram,
S/o Mool Chand Rathore,
Ward No. 15,
Asfavad,
Itarsi,
Distt. Hoshangabad (MP). .. Workman

AWARD

Delivered on this 24th day of May 1999.

1. The Government of India, Ministry of Labour vide its order No. L-41012/11/91-I.R.(DU) dt. 25-9-91 has referred the following dispute for adjudication by this Tribunal.

"Whether the action of Dy. Controller of Stores, R.E. Itarsi (MP) in terminating the services of Shri Raja Ram S/o Shri Mool Chand (MRCL) vide order dated 2-9-87 is justified or not? If not, to what relief the workman is entitled for ?"

2. The case of workman Shri Rajaram S/o Mool Chand Rathore is that he was inducted as a Casual Labour w.e.f. 19-1-84. After completing 6 months service he was sent for medical examination and thereafter was given status of "MRCL". The workman continued to work till June 1986. On 9-6-87 he was given a notice why his services should not be terminated. The workman replied to the show cause notice denying the allegations in it. On 2-9-87 the services of the workman were terminated. Before termination of service no enquiry was held against the workman. He was not given notice of termination or pay in lieu of. Further he has not been given retrenchment compensation. The workman has attained the temporary status and has the protection of Discipline and Appeal Rules. An enquiry should have been held against the workman for procuring employment on a false service card. The workman has completed 240 days continuous service in 12 months prior to termination of service and was entitled to 1 month's notice and retrenchment compensation. The workman prays that the order of termination dt. 2-9-87 be quashed and it be declared that he is in continuous service of the Railways and wages and allowances be paid to him.

3. The case of management is that casual labour card produced by the workman was fake and bogus. The workman got employment by producing a bogus-fake card and his appointment was initially illegal. When it was detected that the card produced by the workman is false and bogus the explanation of the workman was obtained. After considering the circumstances given by the workman, he has been removed from services. This action is in accordance with the rules and directions of the Railway Board. The management had justified its action that it is competent to dismiss the workman.

4. Neither the workman nor the management has led oral evidence in the matter.

5. As stated by the management, in the written statement the workman has obtained employment on the basis of Labour Service Card which was bogus and fake. On that ground alone, the services has been terminated. The burden of proving this was on the Management. The management has not produced the casual labour service card. They have

stated that it has been stolen. They wanted to prove it by secondary evidence. This permission has been given to them on 17-11-97. Inspite of the permission, the management has not produce secondary evidence though opportunity from 21-1-98 to 17-11-98 was given to them. Thus the management failed to prove that service labour card produced by the workman was bogus and fake.

6. The management has admitted that the workman worked as "MRCL" from 19-1-84 to 2-9-87 continuously. Thus it is an admitted fact that 12 months prior to termination of services the workman has put in 240 days of service with the management. In such a case one month's notice before termination was necessary to the workman. Retrenchment compensation at the time of termination was also necessary. Both these things have not been done thus on this ground along the termination of the workman is bad in law.

7. The charge levelled against the workman is that he procured job in the railways on the basis of a fake and bogus service card. This amounted to misconduct. The management was duty bound to prove the misconduct of the employee in an enquiry before terminating the services of the workman. This has not been done. This only shows that the workman was not given an opportunity to defend himself and to explain his conduct. The action of the management is illegal and irregular.

8. The Award is given in favour of the workman. The order of termination dt. 2-9-87 is quashed. The workman will be deemed to be in service till date. Since the workman was removed in an irregular and illegal manner he is entitled to wages and allowances as per rate from 2-9-87 till date. The wages and allowances be paid to the workman in 3 months time from the date of publication of the award. If this is not done the workman shall be entitled to get interest at the rate of 12% P.A. till the payment is made. Management to pay Rs. 1,000 to workman as costs of this case.

9. Copies of the award be sent to Ministry of Labour Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली 22 जुलाई, 1999

का.आ. 2322.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-99 को प्राप्त हुआ था ।

[सं. एल-12011/50/92-आई.आर. (बी. II)]
जी. रॉय, डैस्क अधिकारी

New Delhi, the 22nd July, 1999

S.O. 2322.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 20-7-99.

[No. L-12011/50/92-IR(B-II)]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Shri D. N. Dixit, Presiding Officer.

Case No. CGIT/LC/R/54/93

Regional Manager,
Bank of Maharashtra,
Wright Town,
Jabalpur. .. Management

Vs.

Shri G. P. Gupta,
Dy. General Secretary,
Union of the Maharashtra Bank Employees,
Dewan Bhawan,
Sriram Nagar,
Gulowa Chowk,
Gadha,
Jabalpur. . Workman

AWARD

Passed on this 26th day of May 1999.

1. Ministry of Labour, Government of India by order No. L-12011/50/92-IRB II, dt. 3-3-93 has referred the following dispute for adjudication by this Tribunal :

"Whether the action of the management of Bank of Maharashtra in not granting loans for repair of houses or for marriage to those who had applied for such a loan, is justified ? What relief if any, are the workman entitled to ?"

2. On 17-5-99 both the parties filed a joint application stating that they have settled the matter outside the Court. In view of this no dispute Award is passed. Parties to bear their own costs.

3. Copies of award be sent to Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 22 जुलाई, 1999

का.आ. 2323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-1999 को प्राप्त हुआ था ।

[सं. एल-12012/44/94-आई.आर. (बी-II)]
जी. रॉय डैस्क अधिकारी

New Delhi, the 22nd July, 1999

S.O. 2323.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workman, which was received by the Central Government on 20-7-1999.

[No. L-12012|44|94-IR(B-II)]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Shri D. N. Dixit, Presiding Officer.

Case No. CGIT|LC|R|145|94

Assistant General Manager,
Indian Overseas Bank,
Regional Office,
2-Rajendra Place Rachna Building,
Pusa Road,
New Delhi. .. Management

Vs.

Devki Nandan Shivhare,
S|o Badri Prasad Shivhare,
Near Asmani Mata Mandir,
Shinde Ki Chawani, Lashkar,
Gwalior (MP). .. Workman

AWARD

Passed on this 26th day of May 1999.

1. Ministry of Labour, Government of India by order No. L|12012|44|94-I.R.(B-2) dt. 24-8-94 has referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of Indian Overseas Bank, Gwalior in terminating the services of Shri Deokinandan Shivhare, Messenger w.e.f. 24-2-86 and in not considering him for empanelment for future employment in terms of the 'Approach paper' circulated by the Finance Ministry in 1990 is justified ? If not, what relief is the said workman entitled to ?"

2. The contention of the workman Shri Deokinandan Shivhare is that he was given duty of Messenger when permanent messenger was not available, the workman worked as messenger from December 1982 to February 1986. It is clear that the workman worked for the entire period from August 1984 to June 1985 and this period is more than 240 days. By an order the Branch Manager terminated his services from 24-2-86. This termination is illegal and arbitrary. Prior to termination, the workman was not given notice or wages in lieu of notice. He has also not been paid retrenchment compensation. The management published an approach paper in the year 1990. But it has not been followed in case of the workman. The workman prays that his order of termination be quashed and it be declared that he is still in service. The workman further prays that he be paid wages from 24-2-86 till date.

3. The case of the management is that the workman used to be appointed for temporary period, as and when there used to be a vacancy in the Bank. The nature of employment was casual. The work of messenger was never taken from the workman. The workman has not completed 240 days service in a year. The workman is not entitled to any relief.

4. In this case, the management was proceeded ex-parte on 9-2-98. This order has not been set-aside and management has taken no steps to adduce evidence.

5. The workman has filed his affidavit which revealed that he has worked as a messenger from December 1982 to February 1986. He has received full salary, DA, House Rent for this post. He has also been paid bonus for the year 1984 and 1985. All the averments have not been challenged by the management. In the rejoinder of the workman, it has been stated that from July 1984 to June 1985 he has worked in the post of messenger. In Para-2 of the rejoinder the workman has given break up of his days of duty. This clearly establishes that from June 1984 the workman has continuously worked as a messenger and has been paid full wages and a allowances and bonus admissible to the post. The workman has worked for 240 days in 12 months prior to date of termination.

6. The letter dt. 7-1-88 written by Manager of Gwalior Branch to Head Office Delhi states that the workman has worked as temporary messenger in the years 83, 84 and 85 for about 350 days with breacks. The branch has recommended his case for

employment in permanent vacancy. Thus the case of the workman is proved by letter of manager dt. 7-1-1988.

8. The workman has not been given one month's notice prior to termination or wage thereof. He has also not been paid retrenchment compensation. As discussed above workman has worked as a messenger for 240 days and thus was entitled to retrenchment compensation and notice of termination. Because both these things has not been done the order of termination is illegal. The order of termination from 24-2-86 is hereby quashed. It will be deemed that the workman is in service.

9. From 25-2-86 the workman has not worked in the bank. Hence he is not entitled to wages from 25-2-86, till today. The workman will be entitled to wages and allowances from the date of award and increments from 25-2-86 till today. The service from 25-2-86 will be counted for purposes of pension and promotion and increment in the salary.

10. The Award is given in favour of the workman. He will be deemed to be in service from 25-2-86, till today. The workman will start getting his pay and allowances from today. Parties to bear their own costs.

11. Copies of Award be sent to Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 22 जुलाई, 1999

का.आ. 2324 (औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, पटना के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-99 को प्राप्त हुआ था ।

[सं. एल-12012/64/96-आई.आर. (बी-II)]
जी. रॉय, डैस्क अधिकारी

New Delhi, the 22nd July, 1999

S.O. 2324.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industral Tribunal, Patna as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 20-7-99.

[No. L-12012/64/96-IR(B-II)]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA.

Reference No. 109 of 1997

Reference No. 5(c) of 1998

Management of Central Bank of India, Patna and their workman represented by Central Bank of India Staff Union, Patna.

For the Management : Sri Ajay Kumar Sinha, Advocate.

For the Workman : Sri K. D. Chatterjee, Sr. Advocate, Sri Shivaji Pandey, Advocate.

PRESENT :

Sri T. L. VERMA, Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, the 14th July, 1999

By adjudication order No. L-12012/64/96-I.R. (B-II) dated 8/9 May, 1997 the Central Government (Government of India) Ministry of Labour, New Delhi referred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial DiDsputes Act, 1947 (hereinafter to be referred to as 'the Act') the following dispute between the Management of Central Bank of India, Patna and their workman for adjudication to the Central Government Industrial Tribunal No. 1, Dhanbad.

"Whether the action of the Management of Central Bank of India in dismissing the services of Sh. Pahari Ram w.e.f. 26-3-1994 is legal and justified ? If not, to what relief the workman is entitled ?"

2. After receipt of the adjudication order the reference was registered as Reference No. 109 of 1997 in the aforesaid Central Government Industrial Tribunal and parties appeared but during the pendency of this reference case in the aforesaid Central Government Industrial Tribunal, the Reference was transferred to this Tribunal vide order No. L-12012/064/96/IR(B-II) dated 06/09-02-1993. The reference in this Tribunal was registered as Reference No. 5(c) of 1998 and parties were directed to appear on 20-4-1998 for filling the written statement and both parties filed their written statement

3. The facts giving rise to this Reference shortly stated are that Shri Pahari Ram was a clerk in the Patna Main Branch of the Central Bank of India upto March, 1984. On 28-3-1984 he was deputed to the Frazer Road Branch at Patna for sorting out various categories of notes sent by the Main Branch to the Currency Chest maintained by the Frazer Road Branch. He was on deputation from 28-3-1984 to 23-7-1984 at Frazer Road Branch of Central Bank of India and then again from 4-9-85 to 31-3-1986. He was deputed to the Reserve Bank of India from 24-7-1984 to 3-9-1985 and from 1-4-1986 to 12-10-1986.

4. It is stated that various branches of the Bank, which are authorised in this behalf by the Reserve

Bank of India receive from customers old and unusable notes in exchange of fresh notes. The old notes thus received by exchange are sent to the Frazer Road Branch for storage in the Currency chest. It is said that huge number of such notes had been found surreptitiously stored in this currency chest. The notes stored in the currency chest were of several categories e.g. soiled, torn, burnt, mutilated, pasted by newspapers etc. According to the rules, these notes are to be sorted out and arranged in packets to be sent to the Reserve Bank of India for final destruction. Sri Pahari Ram was one of the several persons engaged for sorting out and making packets of such notes in the Frazer Road Branch of the Bank. Upto May, 1985 the R.B.I. Patna used to receive from the Frazer Road Branch hundreds of packets of defective and mixed currency notes sorted out and packed mostly by one R.K.P. Sinha, and Pahari Ram. Subsequently the Reserve Bank of India branch of Patna stopped accepting such note packets. Consequently, they had to be sent to Reserve Bank of India, Calcutta.

5. That by April, 1986 hundreds of packets stored in the currency chest were sent to Reserve Bank of India, Calcutta. The value of the notes so sent was Rs. 9,68,35,000/-. The Reserve Bank of India out of 68,04,000 notes of the value of Rs. 9,68,35,000 rejected 14,15,500 notes of the value of about Rs. 59.96,700/- of the packets returned by the Reserve Bank of India, Calcutta some were prepared by Pahari Ram. He was charge sheeted and charge sheet Ext. W/4 was served on him. Prior to issuing of charge sheet, a memo No. PRO|DA|W|93|259 dated 18-12-1992 calling upon him to explain as to why disciplinary proceeding be not initiated against him for his actions and omissions which had resulted in huge loss to the Bank was served on him. The explanation submitted by him was found to be unsatisfactory and it was decided that Departmental enquiry be held against him on charges contained in the Charge sheet Ext. W/4. He has been found guilty of the charges framed against him and has been dismissed from service on 6-4-1994.

6. The correctness of the punishment imposed in the departmental proceeding was questioned by raising an industrial dispute and the same was referred, for adjudicaion, to the Central Government, Industrial Tribunal No. 1, Dhanbad and subsequently withdrawn and transferred to Industrial Tribunal, Patna for adjudication.

7. The correctness of the punishment imposed has been challenged inter alia on the ground that the facts complained do not make out any case of misconduct against the workman Sri Pahari Ram. It has therefore been praved that the reference be answered in favour of Pahari Ram and order of his reinstatement in service together with back wages and all other consequential benefits be passed.

8. The Management has resisted the claim of the workman. It has been averred in the written statement filed on behalf of the Management that the workman was given full opportunity to defend himself in as much as evidence was led by both the Parties and the workman was afforded opportunity to cross-examine the witnesses examined on behalf of the Management. After the Enquiry Officer submitted his report to the Disciplinary Authority the workman was given opportunity to give his objection to the findings recorded by the Enquiry Officer. He was also given opportunity of personal hearing. It was only, after considering the material produced in the enquiry proceeding and after considering the findings of the Enquiry Officer and the objection of the delinquent employee and personal hearing that the Disciplinary Authority passed the impunged order of punishment. As there has been no infraction of the rules either relating to Disciplinary proceedings or principles of natural justice, interference in the punishment imposed on the workman is not warranted.

9. The following charges were framed against workman Pahari Ram :—

"1. Shri Pahari Ram did not segregate (i) issuable (ii) non-issuable and (iii) defective notes while preparing Note Packets/ bundles of different denominations, in violation of the prescribed norms rules and procedures. He was thus grossly negligent in performance of his duties, consequent upon which the remittance dt. 1-4-1986 of the Currency chest, Frazer Road Branch was returned back by Reserve Bank of India, Calcutta, due to a large number of unduly cut|mutilated, defective Notes in soiled notes Packets involving total Rs. 59,96,700 (Rupees Fifty nine lacs unduly cut|mutilated, defective Notes only), since brought back by Sri Pahari Ram on 22-2-1991 at the Currency Chest, Frazer Road Branch, Patna. The aforesaid gross negligence on the part of Sri Ram has involved the Bank in serious loss.

2. Shri Pahari Ram deliberately violated the norms and procedures for preparing Note Packets, by not putting his full signature and full date on the Note Packets, constituting significant portion of the aforesaid remittance dt. 1-4-1986 taken by him as the Bank's Potedar/representative to R.B.I., Calcutta, subsequently returned as aforesaid.

3. Sri Pahari Ram indulged himself in fraudulent exchange of a large number of defective notes as also in complicity with Sri Anil Kumar Sinha, previously Chief Cashier, Currency Chest, Frazer Road Branch, Patna now sub-Accountant, Yarpur Branch with malafide intention."

10. Sri K. D. Chatterjee, the learned Sr. Counsel for the workman submitted that so far Charge No. 3 was concerned there was absolutely no material to substantiate the same. This charge pertains to the allegation that Pahari Ram, in connivance with Sri Anil Kumar Sinha, the then Chief Cashier indulged in fraudulent exchange of large number of defective notes. The fact that a large number of defective notes had been exchanged is not in dispute. All that has to be seen is as to whether there is material to prove the complicity of workman Pahari Ram in making such exchanges. The only witness

examined in support of this allegation is M. W. 1. This witness joined Frazer Road Branch of the Bank long after the transactions in question had taken place. Admittedly a criminal case was filed for the defalcation of the Government money in course of exchange of defective notes and a large number of persons including the workman, Pahari Ram were made accused. The C.B.I. had submitted a charge sheet in the case after completing investigation. The workman Pahari Ram was not however sent up for trial as there was no sufficient evidence to establish his connection in the fraudulent transactions. The learned counsel for the Bank has urged that the standard of probity for bringing home criminal charges beyond all reasnaable doubts and for holding a person guilty of misconduct in a departmental proceeding are not similar. Therefore the fact that the workman has not been sent up for trial can not ip-so-facto be taken as a circumstance in favour of the workman. It is well established that the standard of evidence required for establishing a criminal charge beyond all reasonable doubt and that for proving misconduct in a Disciplinary proceeding stand on different footing. The Disciplinary proceeding is decided on the basis of preponderance of probabilities based on some material on record. This, however, does not mean that findings in a Disciplinary proceeding can be based on mere surmises and conjectures. There has to be some evidence which may lead a reasonable person to the conclusion that the charge has been brought home. As has already been mentioned above the Management has examined only Sri D. K. Das M. W. 1 in support of the charges. Admittedly he joined the Frazer Road Branch of the Bank long after the alleged fraud had been committed. He, therefore, can not have personal knowledge of the transactions.

11. The learned counsel for the Management submitted that M.W. 1 deposed that Sri Pahari Ram had at times worked as Paying/Receiving Cashier at Frazer Road Branch. The workman has also in his statement admitted that for a brief period he worked on the said counter. There is, hardly any evidence to show that any defective notes were received during the period or that the workman, Pahari Ram had been instrumental in receiving and exchanging the defective notes during the period his services were utilised as Paying |Receiving Cashier at the Frazer Road Branch or during any other period of his deputation. I am unable to accept the argument of the learned counsel of the Management that as he was deputed in the Paying/Receiving Counters and that he had not put his full signatures on the packets prepared by him with date and year and that he had not sorted out issuable, nonissuable and defective notes according to the norms laid down by the Reserve Bank of India, his complicity in the fraudulent transactions can not be ruled out. There is no material to substantiate this argument and which appears to be purely based on surmises and conjections. I have very carefully persued the evidence adduced by the Management in support of this allegation and I find that with no stretch of imagination this evidence can be said to connect the workman with the alleged fraululent transactions in which the defective notes were exchanged for good notes. The obvious conclusion, therefore, follows that charge No. 3 has not been proved against the workman.

12. Since charge No. 1 and 2 are interconnected they are being dealt with together. Charge No. 1 pertains to the omission on the part of the workman to segregate issuable, nonissuable and defective notes while preparing note packets|bundles of diffrent denominations. Charge No. 2 pertains to the ommission of the workman to put his full signatures and full dates on the note Packets prepared by him which were remitted to Reserve Bank of India, Calcutta through him as Bank's Potedar|representative and subsequently returned. The Manual of Instructions of the Cash Department, Central Bank of India Provides that :—

> "1. Notes should be properly sorted into issuable and non-issuable notes (2) Cut/mutilated notes should not be included in issuable cash packets (3.) Issuable|soiled mutilated notes are to be sorted, stitched and bundled separately (4) Non-exchangeable notes such as notes with oil trace, discoloured, defaced, etc. should not be included in cash packets of issuable notes (5) Notes of the denomination of Rs. 5/-, Rs. 10/-, Rs. 20/-, Rs. 50/-, Rs. 100|- and Rs. 500 are to be sorted and packed accordng to size of notes (6) Cash packets must bear the exact pieces of notes without any excess or shortage."

The material on record would show that 68,04,000 notes of the value of Rs. 9,68,35,000 were sent to Reserve Bank of India and of these 14,15,500 notes valued at about Rs. 59,96,700 were rejected by them. The notes returned by the Reserve Bank of India were in 14,155 packets. The Enquiry Officer, finding it physically not possible to examine each bundle because of time and other constraint made random inspection of some of the Packets returned by the Reserve Bank of India. The workman has admitted his signatures in some of the Packets so inspected by the Enquiry Officer. From the report of random inspection M.E. 13 it would appear that none of these packets bore full signature of the workman with date and year. It would also appear that the Packets inspected by the Enquiry Officer were not properly sorted inasmuch as they contained reissuable, nonissuable and defective notes mixed up with one another. These facts have not been disputed.

13. The learned counsel for the workman submitted that the omission on the part of the workman to put full signature with date and year has been treated as negligence which amounts to minor misconduct for which his increment has been stopped as punishment. The punishment awarded, however, is not consistent with the provisions of clause 19.8 of the Bipartite settlement. According to the provisions of the said clause increment could have been stopped only for six months whereas the Punishing Authority has stopped the increment which will have cumulative effect. The Punishment was, therefore, without jurisdiction.

14. It was next argued that negligence has not been defined in bipartite agreement and that ordinary meaning of negligence is want of proper care and that every negligence will not amount to culpable negligence warranting punishment. The latter argument of the learned counsel appears to be misplaced.

Here it is not the question whether negligence is culpable or not. The question is whether the workman has violated the instructions issued in regard to the sorting out the notes. It has already been pointed out above that according to instruction issued in that regard in the Manual of Instruction of the Cash Department of the Central Bank of India extracted above, the sorting has to be done in the manner prescribed. The evidence that has come on record after the random inspection of packets of the notes returned by Reserve Bank of India is that the packets which were inspected by the Enquiry Officer and bore the signature of the workman have not been properly segregated inasmuch as they contained issuable, nonissuable and defective notes mixed up with one and another. This clearly is violation of the instruction issued in that behalf by the competent authority. Omission on the part of the workman to abide by the instruction in regard to segregating issuable non-issuable and defective notes and making separate packets of such notes is per-se negligence.

15. It was next argued that the signature of workman have been proved on only 14 packets out of 14,155 packets returned by the Reserve Bank of India. The number of packets which are proved to have been prepared by the workman in violation of the rules is so small in comparision with the huge number of bundles returned clearly suggests an unintentional slip on the part of the workman. I am unable to accept this contention. It is only a sample inspection that had been done by the Enquiry Officer. Whether or not other packets returned by the R.B.I. which were not inspected could or could not have contained the signature of the workman is in the realm of conjecture which I do not want to enter. The fact however remains that 14 of the packets prepared by the workman bore his signature and had not been prepared in accordance with norms prescribed in the Manual of Instruction of the Cash Department of the Central Bank of India.

16. The Manual of Instructions further provides that Packets prepared after sorting out issuable, nonissuable and defective notes should be the roughly covered and checked and should bear full signature of the examiner and recounter who last counted and checked it. The packets should also bear the particulars such as the number of pieces, date, name of the Branch of the Bank. The evidence on record fully establishes that some of the packets bore only initial of workman and that the date and month was not followed by year of signature. The omission on the part of the workman to put full signature on the packets prepared by him is an ex-facie violation of the above instruction. The learned counsel of the workman submitted that signature also includes initial and in support of his argument has referred to a definition of 'signature' as given by Halsbury and also the decision of the Madras High Court reported in A.I.R. (29)1942 Madras 680. The decision of Madras High Court relied upon by the learned Counsel is besides the point, Halsbury's definition of 'signature' is also of no consequence so far this reference is concerned. The rules specifically provide that the packets prepared after sorting the notes should bear full signature of the person who checked or recounted the notes. Therefore, there is no scope for the argument that full signature would include initials. The rules require that the person sorting the notes should put full signature with date and year on the packets. This has, admittedly, not been done.

17. In view of the facts and circumstances discussed above I have no manner of doubt that charge No. 1 and 8 have been established beyond any reasonable doubt.

18. In view of the conclusion arrived at above the next question that follows is whether the quantum of punishment imposed is justified or not.

19. So far as charge No. 3 is concerned, it has already been held above that the same has not been established. That being so the punishment of dismissal from service on that count should be set aside.

20. Having considered the facts and circumstances of the case it is my considered view that the nature of negligence proved is not such as could warrant the punishment of dismissal from service for the charge No. 2.

21. In the facts and circumstances of the case I am of the view that the ends of justice will be met by moderating the punishment of dismissal from service for Charge No. 2 to that of stoppage of increment for three years with cumulative effect. In view of this the argument that the punishment given for Charge No. 1 is not in accordance with Clause No. 19|8(c) of the Bipartite agreement losses its relevance. The workman should be reinstated in service with back wages and all consequential benefits.

22. This is my award.

T. L. VERMA, Presiding Officer.

नई दिल्ली 22 जुलाई, 1999

का.आ. 2325.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-99 को प्राप्त हुआ था ।

[सं. एल-12012/104/84-डी II (ए)]

जी. राय, डेस्क अधिकारी

New Delhi, the 22nd July, 1999

S.O. 2325.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 20-7-99.

[No. L-12012/104/84 DII(A)]

G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR
PRESIDING OFFICER SHRI D. N. DIXIT

CASE NO. CGIT-LC/R/100/87

Regional Manager,
Allahabad Bank, Civil Lines,
Jabalpur. .. Management.

Vs.

Secretary,
All India Allahabad Bank Employees Association,
85/5, Narmada Road,
Jabalpur. .. Union.

Award

Delivered on this 24th day of May 1999

1. The Government of India, Ministry of Labour vide its order no. L-12012-104-84-D.II(A) dt. 3-7-87 has referred the following dispute for adjudication by this Tribunal:—

"Whether the action of the management of Allahabad Bank Jabalpur (MP) in relating to their Shastri Marg Branch Jabalpur in not considering Shri Sunil Kumar Sarathe for filling permanent vacancies in subordinate cadre is justified? If not, to what relief is the workman entitled and from what date ?"

"Whether the wages of Rs. 60/- p.m. paid to Shri Sunil Kumar Sarathe, part-time waterman employed in Shastri Marg Branch at Jabalpur of Allahabad Bank by the Management of Allahabad Bank, Jabalpur (MP) is proportionate to the hours of work done by him ? If not, what would be his wages and from what date ?"

2. The case of the workman Sunil Kumar Sarathe, is that he is working as part time employee with the Allahabad Bank since October 1979. He claims to be a regular employee of the Bank. Prior to this from 1977 to 1979 he worked as a casual Labour in the Bank on daily rate basis. Workman was paid Rs. 6/- or Rs. 8/- or Rs. 10/- per day from time to time. The management issued a circular on 26-5-82 in which it is stated that those employees of the bank who had worked for 600 days between 1-1-72 to 30-4-82 will be appointed on regular basis. This agreement was signed between the management and the Trade Unions. It was further agreed that if in 6 months time from the date of application workman is not appointed in a regular basis, he will be entitled for the salary and wages of the post. The workman applied on 12-7-82 but the application of the workman was turned down by the management. The workman has completed required service but still he is paid wages as a part time employee. The workman is required to work every day 8 hours but he is not being paid the wages for it. The workman prays that from 21-4-75 he be paid full wages and he be absorbed as a permanent employee of the bank.

3. The case of the management is that the workman is employed as a part time employee and every day he is working less than 1 hour. The workman has never been employed in a regular capacity. The part time employees are not regular employees of the bank. The Bi-party settlement dt. 26-5-82 does not cover the workman. The workman could not be regularised because he is a part time employee. Workman was paid wages as per settlement for part time employees. The workman was only filling drinking water in the Bank—which required less than an hours work every day. The workman has been paid for the part time work done by him and nothing remains to be paid to the workman. The workman facing his claim on the circular dt. 26-5-82. According to the management the claim of the workman is arbitrary and imaginative. They want the claim to be dismissed with costs.

4. The first point for consideration is whether the workman was a part time employee or a regular employee. In this connection, the workman has not produced any document to shows that he was absorbed as a regular employee. Admittedly the workman was never paid wages of a regular employee. The workman was only paid wages of a regular employee. The workman was only paid remuneration fixed for part time employee and that also one who is working for one hour daily.

5. The management has examined Shri Mahesh Prasad Tiwari and Puttulal Bhargav. Both these witnesses have filed their affidavits and they have been subjected to cross examination. From their statements, it is clear that the workman was working less than one hour every day in the Bank. The workman was never employed in a regular capacity. His job was to fill drinking water in the Bank. This required less than an hour every day.

6. The workman has examined himself in Court. He has not stated that from part time employee he has been converted into a regular employee. This ommission is significant. The workman has not been taken in employment as per circular of the management. In para 4 of the affidavit Shri Puttulal Bhargav has stated the procedure for appointment of employees. The workman was never interviewed for the regular post. He has not been selected for the regular post and an appointment letter for a regular post does not exist.

7. The Hon'ble Supreme Court in the case of Union of India and others Vs. Bishwember Dutt reported in 1996(11) SCC Page-341 has held that a person can claimed regular employment only after getting selected. The indication of the process of selection as per rule is a condition precedent for regularisation. It has also been observed that a part time employee appointed the Dehoers the rule even though working regularly for a long time is not entitled for regularisation The circular dt. 26th May 1982 on which workman is pressing his claim is for employees working full time. Meaning thereby that it will not apply to employees working as part time. In the present case, the workman has failed to prove that he was a full time employee of the management As such this circular has no application.

8. The workman failed to prove that he was a regular employee of the management. He has never paid the wages of a full time employee. There is no order on record to show that he was a full time employee. The circular dt. 26-5-82 does not help the workman. The workman failed to establish that he has worked full time hence he is not entitled to the salary paid to the full time employees.

9. The inference of the above is that workman failed to prove that he was a regular employee of the management and further he had failed to prove that he has been paid less emoluments. The Award is given in favour of the management. Parties to bear their own costs.

10. Copies of the award be sent to Ministry of Labour Government of India as per rules.

D. N. DIXIT, Presiding Office

नई दिल्ली, 22 जुलाई 1999

का.आ. 2326.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, I, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-99 को प्राप्त हुआ था ।

[सं. एल-12012/124/97-आई.आर. (बी II)]
जी. रॉय, डैस्क अधिकारी

New Delhi, the 22nd July, 1999

S.O. 2326.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 20-7-99.

[No. L-12012/124/97-IR(B-II)]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri C. V. Raghavaiah, B.Sc., B.L., Industrial Tribunal-I.
Dated, 18th day of June, 1999

Industrial Dispute No. 70 of 1997

BETWEEN

State Secretary,
Syndicate Bank Employees Union,
Near Pragathi College, Kandaswamy Lane,
Hanuman Tekdi, Hyderabad-500196. ..Petitioner.

AND

The Deputy General Manager,
Syndicate Bank, Pioneer House,
Zonal Office, Somajiguda,
Hyderabad. ..Respondent.

APPEARANCES :

Sri William Burra, Advocate for the Petitioner.

M/s. K. Srinivasa Murthy and Smt. K. Bharathi, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour by its Order dated 28-11-97 in No. L-12012/124/97/IR(BII) made this reference U/s. 10(1)(d) and sub-section 2A of Industrial Disputes Act to this Tribunal for adjudication of the following industrial dispute :

Whether the action of the Management of Syndicate Bank, Banganpally Branch in dismissing Sri K. Bhaskara Rao from service is legal and justified ? If not, to what relief the workman is entitled ?

The above reference was taken on file as I.D. No. 70/97 on being served with notice of reference both parties made appearance through their counsel and filed their respective pleadings.

2. The cause of the concerned workman Sri Bhaskar Rao is fallen up by the petitioner union and the claim statement was however filed by the workman himself with the following allegations.

The workman hereinafter called the petitioner for purpose of convenience was appointed as clerk in the repondent bank on 10-9-75 at Khazipet branch. Earlier he worked in Indian Air Force for 5 years. The petitioner worked in several branches including at Banaganapalli Branch. For alleged acts of misconduct he was served with a charge sheet on 23-3-94 alleging that on 14-3-92 while working as cashier in Banaganapalli Branch he received a sum of Rs. 7500 from the customer Sri K. Hussain with SB A/c No. 1368 Rs. 7500 and credited the same in his SB Account but failed to enter in the books of account of the Bank and the said fact came to light at the time of tallying of SB Account and he has thus falsified the records of the branch and misappropriated an amount of Rs. 7500 remitted by the above customer and four more charges are levelled against him. The petitioner gave explanation denying the above charges and stating that the customer came back to the bank within 15 minutes on 14-3-92 and took away the money remitted for some urgent purpose but due to pressure of work and shortage of staff the petitioner failed to score of the entries made in the pass book and SB ledger and he forgot the same till the credit entry came to light during tallying of account. Not being satisfied with his explanation a departmental enquiry was ordered and the enquiry officer found the petitioner guilty of all the charges on the basis of evidence of Sri C. C. Babu who investigated into the case and submitted false report implicating the petitioner.

The petitioner contended that finding of the enquiry officer is perverse as he has ignored the letter dated 16-3-93 given by the customer Sri K. Hussain Saheb and letter dated 26-3-93 of the Branch Manager to the Divisional Manager Cuddapah that the account holder himself remitted Rs. 7500 and interest on 19-3-93 admitting his lapse. The disciplinary authority has accepted the finding of the enquiry officer and imposed punishment of removal while administering warning with regard to other charges. The appellate authority also failed to appreciate the material on record while confirming the order of disciplinary authority. According to the petitioner the investigation officer exceeded his powers in visiting the residence of the customer and in obtaining letter dt. 18-11-93 implicating the petitioner, that the enquiry officer committed grave error in not examining the customer and the concerned manager and in placing strong reliance on the evidence of solitary witness i.e. investigation officer who was bent upon implicating the petitioner to please the higher authority. The petitioner further contended that disciplinary authority erred in accepting the finding of the enquiry officer and in not taking into consideration the good record of the petitioner while imposing the punishment of dismissal which is harsh and disproportionate. The petitioner this prayed that award may be passed by declaring that the respondent was not justified in passing the order dated 26-7-95 (passed) by the disciplinary authority and confirmed by the appellate authority by its order dated 15-11-95 as there is no proper enquiry and finding of the enquiry officer is not based on any acceptable evidence.

3. The respondent Management filed a detailed counter denying the various allegations regarding the fairness of enquiry proceedings and the action of the management in dismissing the petitioner from service on the basis of report of enquiry officer while admitting that the petitioner is charge sheeted for various acts of misconducts while working in Banaganapalli Branch. It contended inter alia that on 14-3-92 the petitioner accepted Rs. 7500 from the above customer but failed to remit the same and enter in the accounts of branch but made false entries in the pass book and ledger folio of the account holder and misappropriate the same till it was remitted on 19-3-93. It made necessary allegations with regard to other charge and it is not necessary to mention them in extenso as the same are not relevant for the purpose of this case. It denied that there was no proper enquiry, that enquiry officer erred in relying on the evidence of investigation officer, in not examining the customer, the concerned bank manager that the finding of the enquiry officer is perverse, that disciplinary as well as the appellate authority did not apply their mind or appreciated the material on record in proper perspective while accepting the finding of the enquiry officer. It thus justified its action in dismissing the workman from service for this act of grave misconduct and contended that there are no grounds to set aside the above order. It prayed for rejecting the reference being devoid of merits.

4. The validity of the enquiry proceedings was decided as preliminary point as the same was seriously disputed by the petitioner. During the course of the above enquiry the respondent management examined the enquiry officer as MW1 and marked Ex. M1 to 10 through him. Neither oral nor documentary evidence adduced on behalf of the petitioner workman. This tribunal by its order dated 22-3-99 based on the above evidence held that there was proper and fair domestic enquiry and principles of natural justice was not violated in holding the enquiry.

5. Hence arguments were heard on merit as no further evidence adduced by either side on the merits of the case. Neither party brought on record impugned orders of disciplinary authority though they are available in records. The petitioner's counsel advanced oral arguments while the respondent counsel was permitted to file written arguments as per the order dated 14-6-99 on I.A. No. 49/99 in the interest of justice though the matter was reserved for passing award on 11-5-99.

6. The only short point that arises for adjudication is whether the respondent is justified in dismissing the petitioner from service by its order dated 26-7-95 and confirmed by the appellate authority by its order dated 15-11-1995 ?

7. Point.—Few admitted facts necessary for adjudication of the dispute are as follows . The concerned workman Sri Bhaskar Rao worked for 5 years in Indian Air Force before he joined as a clerk in the respondent Bank at Khajipet Branch. He was working as cashier in Sanjamala Branch at the relevant time. i.e. 14-3-92. One Sri K. Hussain Saheb is one of the account holder of the said bank with SB A/c 1368.

8. On 28-3-1994 he was served with Ex. M1 charge sheet containing 5 charges namely (1) That on 14-3-92 he received a sum of Rs. 7500 from the above customer for deposit but failed to account for the same in the books of accounts while making entry in the pass book and ledger folio of the account holder (2) that he discounted cheque of Rs. 3200 at Nandyal Branch on 20-2-93 without mainitaining adequate balance in his account (3) that he borrowed funds from three persons beyond his capacity of repayment (4) that he failed to disclose liability with the loan account and (5) he failed to provide sufficient balance in his SB Account for remitting income tax for the financial year 1991-1992, on the ground the above acts amount to gross misconduct being prejudicial to the interest of the bank within the terms of clause 19(5)(J) of the Bipartite settlement. He was given 15 days time to submit his explanation of defence from the date of receipt of the above charge sheet. But he did not submit any explanation. The disciplinary authority decided to initiate domestic enquiry and accordingly appointed MW1 as the enquiry officer under Ex. M2 dated 30-7-94. He inturn gave Ex. M3 notice of enquiry dated 11-11-1994 fixing the hearing date on 13-12-1994. But it was adjourned to 16-12-94 after due intimation to the workman. Thus enquiry was held on 16-12-1994 and 17-12-1994. The workman was defended by one K. Rama Reddy Organising Secretary of APBEF. Ex. M4 is the proceedings of enquiry, one KLN Joshi Manager (IR) Z6, Hyderabad was appointed as presenting officer. During the course of enquiry on behalf of Management one Sri CC Babu former vigilance officer RI Hyderabad who investigated into the case was examined as MW1 and Ex. MEX 1 to 35 are marked. The workman did not adduce evidence on his behalf. But gave written submission dated 17-12-1994.

9. During the course of enquiry the workman admitted charges 2 to 5 but denied charge No. 1. Hence MW1 enquiry officer proceeded with enquiry in respect of all the charges levelled against the workman. After completion of enquiry MW1 submitted Ex. M5 report dated 21-2-1995 holding that all the charges are proved. He followed the procedure of enquiry laid down under Ex. M6 Bipartite settlement dated 19-10-66 and amended upto 28-2-94. During the course of enquiry on the preliminary point i.e., the validity of enquiry, Ex. M7 letter dated 26-3-93 which is same as Ex. MEX 12 sent by the manager of the branch to Divisional Manager, regarding charge No. 1 incident. Ex. M8 letter dated 16-3-93 same as Ex. MEX 9 given by the account holder to the branch Manager Ex. M9 letter 19-3-93 which is same as Ex. MEX 11 addressed by the branch manager to Divisional Manager that the account of account holder was set right and Ex. M10 letter dated 18-11-93 which is same as MEX 14 given by the account holder to the investigation officer, are marked before this tribunal.

10. After receipt of Ex. M5 enquiry report the disciplinary authority forwarded the same to the workman under letter dated 22-2-95 and called for his remarks if any within 15 days. In the meanwhile the representative of the workman sent letter dated 12-5-95 to the disciplinary authority to set aside the enquiry report. But the disciplinary authority accepted the conclusion of the enquiry officer and found the workman guilty of the 5 charges levelled against him Hence he issued second show cause notice of 25-5-95 regarding proposed punishment and fixing 13-5-95 for hearing objections regarding proposed punishment, written arguments submitted by the representative of the workman regarding proposed punishment besides disputing the validity of the enquiry proceedings. But the disiplinary authority passed final order dated 26-7-1995 imposing punishment of dismissal regarding first charge and punishment of warning regarding charges 2 to 5 treating them as minor misconducts aggrieved by the above order the workman preferred appeal but the same was dismissed on 15-11-95. The petitioner union took up his case by moving the conciliation authority leading to this reference.

11. The validity of the domestic enquiy was taken up as preliminary point by this tribunal and during the course of the said enquiry as stated above the enquiry officer was examined as MW1 and Ex M1 to 10 are marked. No evidence was adduced on behalf of th workman. This tribunal by its order dated 22-3-1999 held that the enquiry was held in a proper and fair manner and no principles of natural justice are violated. The workman did not challenge the said order by carrying the same in appeal or by way of writ petition. Thus the said order has become final and arguments were heard on merits as no further evidence was adduced by either side.

12. The leraned counsel attacked the order of dismissal on the following grounds (1) there is no proper and fair enquiry and (2) that finding of the enquiry officer that 1st charge proved is not supported by evidence as such it is perverse consequently the order of dismissal passed by the disciplinary authority and confirmed by the appellate authority are not sustainable being unjustified. Hence the workman is liable to be reinstated with all attendant benefits which is however disputed by the management.

13. I am of the view that 1st ground is untenable as this tribunal has already held on appreciation of the evidence placed on record before it that enquiry proceedings are in no way vitiated and it was held in a proper and fair manner following the procedure laid down in Ex. M6 bipartite settlement. I therefore feel that it is no longer open for the workman or union to contend that there was no fair enquiry without challenging the order dated 22-3-99 in an appropriate manner in an appropriate forum. Hence I negative this contention.

14. Coming to the 2nd ground of attack which is vehemently urged by the learned counsel of the petitioner, it is submitted that finding of the enquiry officer that the 1st charge was proved is perverse as it is not supported by acceptable evidence and hence the punishment of dismissal passed by the disciplinary authority and confirmed by the appellate authority is illegal. The learned counsel submitted that the petitioner has no doubt received Rs. 7500 from the customer Sri K. Hussain Saheb on 14-3-92 for remittance, that he made entry in the SB pass book and ledger folio of the petitioner but shortly thereafter the account holder requested him to return the said amount for some urgent purpose, that hence he returned the amount to the customer being a respectable person but due to pressure of work he did not concert the credit entry in the SB Account and ledger folio, that he forgot the transaction till it came to light at the time of tallying the SB Account that at the request of the incharge manager the customer gave Ex. M8 letter dated 16-3-93 admitting his mistake and promissing to remit Rs. 7500 together with interest within 2 or 3 days, that on 19-3-93 the customer deposited Rs. 9221 as promised, that the said fact was confirmed to the divisional manager under Ex. M9 letter dated 19-3-93, that hence the petitioner has not misappropriated any amount, made fictitious entry or failed to make entry in books of account but later the investigation officer Sri C. C. Babu obtained Ex. M10 letter dated 18-11-93 by going to his house and pressing him to give statement to the effect that petitioner made use of Rs. 7500 given by him for remittance and that the petitioner gave him Rs. 9221 asking him to deposit in the bank and obtained Ex. M8 letter on 16-3-93 as if he admitted his lability and agreed to remit the amount, without a view to implicate the petitioner.

15. The learned counsel submitted that though customer gave contradictory statement regarding to the incident i.e. Ex. M8 and M10 the management did not examine the customer though he is a material witness to prove the above documents even though he is alive and very much available and did not make him available for cross examination and enquiry officer marked the above letter though the investigation officer who is biased against the petitioner. He submitted that the enquiry officer erred in placing reliance on the solitary testimony of investigation officer who is interested witness, being interested in getting the petitioner punished some how or other and relying on Ex. M10 statement which is inconsistant with his earlier statement Ex. M8 and without examining the incharge manager who wrote Ex. M9 letter to the Divisional Manager. He thus contended that Ex. M10 statement is in admissible in evidence as the author of it neither examined nor made available for cross examination and if Ex. M10 is taken out of consideration there is no other legal evidence in support of the conclusion of the enquiry officer that this charge is proved. He has submitted that Ex. M10 statement given behind the petitioner cannot be treated as substantive evidence. He thus contended that finding of the enquiry officer is unsustainable being perverse and the said charge was not proved by the management in this tribunal also by examininig either the manager or the customer Sri Hussain Saheb. In support of the

the contention that Ex. M10 is inadmissible in evidence and hence there is no proof of the charge, he placed reliance on the decision in the case of Phulbari Tea Estate and its workman (1959) II LLJ P 663 and Central Bank of India Limited New Delhi Vs. Prakash Chand Jain (1969) II LLJ P 377.

16. The learned counsel for the respondent on the other hand contended that finding of the enquiry officer which was accepted by the disciplinary authority and the appellate authority is fully supported by the evidence placed on record including Ex. M10 Statement of customer, besides the admission of petitioner that he made entry in SB Account and ledger folio of the customer for Rs. 7500 and the absence of entry in the cashier scroll, etc. books of account. He has submitted that the petitioner obtained Ex. M8 letter from the customer to save himself having given the amount misappropriate by him together with interest to the customer when the fraud committed by the petitiner came to light at the time of tallying of account in November 1993 and when the said fact was informed to the Divisional Manager under Ex. M7 letter dated 26-3-93, that the petitioner did not give any explanatioin to Ex. M1 charge sheet including on this charge but came up with the plea that the customer took away the amount by way of an after thought by submitting written arguments dated 17-12-94. He has submitted that the petitioner did not adduce evidence before the enquiry officer or before this tribunal in support of his theory and the enquiry officer after consideration of the material on record and absence of evidence in support of defence plea came to the right conclusion that this charge is proved. He has submitted that this tribunal cannot reappraise the evidence on record and substitute its contention in the place of conclusion of the enquiry officer on a question of fact and the strict rules of evidence not applicable to domestic enquiry and hence Ex. M10 besides Ex. M8 statement of the customer are admissible in evidence, though Sri Hussain Saheb who gave the contradictory statements not examined, as the petitioner did not ask for his production for cross examination or examined on his behalf and though incharge manager was not examined. He has submitted that the finding of the enquiry officer cannot be disturbed on the ground of inadequately of evidence or two conclusions are possible on the basis of evidence placed on record. In support of his contention reliance is placed on the decision in the case of Khardah and Company Vs. Its workman 1963(II) LLJ P 452.

17. Before adverting to the merits of the above contention it will be useful to set out certain admitted facts and principles of law with regard to the jurisdiction of this Tribunal with regard to conclusion reached by the enquiry officer in domestic enquiry proceedings. Admittedly the petitioner received Rs. 7500/- on 14-3-92 from the customer Sri S. K. Husain Saheb for remittence in his SB Account, that he made entry in the pass book and ledger folio of the customer, that there is no pay slip in the bundle for the said amount, that he did not enter the same in cashier scroll and other account books of the Bank, that this discrepancy came to the light later at the time of tallying of SB Account. But the said amount together with interest was later made good on 19-3-93. The petitioner was served with Ex. M1 charge sheet but he did not submit any explanation. Hence domestic enquiry was ordered by appointing MW1 as the enquiry officer one Sri C. C. Babu of the Vigilance department was appointed as investigation officer to investigate into the case. The customer gave Ex. M8 letter and Ex. M10 letter while the Bank Manager sent Ex. M9 letter dt. 19-3-93 that with payment of Rs. 9059/- the account was brought to the credit, the enquiry officer after conducting the enquiry in accordance with the procedure laid down under Ex. M6 submitted Ex. M5 report holding the petitioner guilty of all the charges levelled against him including this charge which amounts to grave misconduct, that the rules of evidence prescribed under Evidence Act is not strictly applicable to the domestic enquiry. During the course of enquiry only investigation officer was examined besides marking several documents. Admittedly the incharge manager and regional manager and the concerned customer Sri Husrain Saheb who gave contradictory statement i.e. Ex. M8 and M 10 are not examined.

18. The disciplinary authority is the sole Judge of the facts, Finding recorded by him on appreciation of evidence cannot be interferred unless finding was based on no evidence or finding were wholly perverse or legally untenable, adequacy of evidence cannot be canvased and this tribunal or High Court cannot normally substitute its own conclusion and scope of judicial review is not skin to appeal. This principle of law is laid down by the Apex Court in the case of Alpeval Export Promotion Council Vs. A. K. Chopra 1999(1) LLJ P 962. If the delinquent has not furnished list of witnesses to be examined, failed to produce witness though sufficient opportunity is given and there is no material on record that enquiry officer is biased, non examination of the persons who gave statement but marked during the course of enquiry. It has to be held that enquiry is held following principle of natural justice. This principle of law laid down by the Apex Court in the case of Director General Indian Council of Medical Research vs. Dr. Anil Kumar Ghose 1999(1) LLJ P 1036 and the burden of proof insisted in domestic enquiry is not the same as in the case of criminal case and even if the statement of witness was recorded in the absence of delinquent, there is no breach of principle of natural justice if the delinquent given opportunity to cross examine the witness as was held in State of U.P. vs. Om Prakash Gupta AIR 1979 SC 679.

19. Bearing the above admitted facts and principle of law it has to be seen whether the finding of the enquiry officer is based on evidence or it is perverse. Relying on the testimony of the investigation officer and Ex. M 10 statement given by the customer and on the circumstance that petitioner entered credit entry for Rs. 7500 in the pass book and ledger folio of the petitioner but did not make entry in the cashier scroll and other books of account i.e. day book and sub day book and taking into consideration the circumstance that petitioner did not adduce evidence in support of his contention that customer took return of the amount soon after depositing it, the enquiry officer came to the conclusion that 1st charge levelled against the petitioner was proved besides other charges. The enquiry officer did not give weight to Ex. M8 statement given by the customer on the ground that the petitioner obtained the said letter to save himself and he recorded finding that the petitioner committed act of gross misconduct of doing an act prejudicial to the interest of the bank in terms of clause 19(5) J of Bipartite settlement. The enquiry officer did not feel that non examination of customer and incharge manager is fatal. A perusal of Ex. M5 report would show that the enquiry officer gave cogent and sound reasons in support of his finding though the evidence on record may not be sufficient and another conclusion is possible A perusal of Ex. M10 statement of the customers would show that petitioner opposed and informed him that he committed mistake paid Rs. 9221/- and asked him to denosit in his account but took Ex. M8 letter which is however contrary to Ex M10 letter given by him, when under he stated that he withdrew excess amount and he is prepared to pay the same with interest in 2 or 3 days It is quite probable after the above discrepancy was detected the incharge manager and petitioner prevailed upon the account holder to give Ex. M8 statement to save the petitioner.

20. The learned counsel however contended that the investigation officer obtained Ex. M10 by going to the house of the customer to implicate the petitioner that the enquiry officer erred in relying on Ex. M10 though it is not admissible in evidence due to non examination of the customer Sri Hussain Saheb who was said to have given it and not made available for cross examination and as he gave earlier Ex. M8 letter admitting his lapse and made good the amount. He thus contended that due to non examination of customer a material witness Ex. M10 statement was not duly proved and ought not have been relied. If Ex. M10 is excluded there is no material in support of the enquiry officer's conclusion as under Ex. M9 bank manager, informed that customer paid the amount and account was brought to credit. In support of above contention he placed reliance on the above decisions.

21. Though there can be no quarrel with regard to the principle of law laid down in the above authorities I am of the view they have no bearing on the facts of the case as the petitioner did not object for marking Ex. M10. nor filed petition before the enquiry officer to produce the customer Sri Hussain Saheb for cross examination in view of the contradictory statements given by him and he has not chosen

to examine himself as a witness in support of his contention that the customer took return of money soon after deposit and as no bias is alleged against the enquiry officer. I therefore feel that the enquiry officer has not erred in making Ex. M10 i.e. Ex. MEX 14 and relying on it besides other circumstance appearing against the petitioner as the petitioner was supplied with the said statement and had opportunity to call the customer for cross examination or could have himself examine as was held in AIR 1970 SC 679 and State Bank of Patiala Vs. S K Sharma (1996) SCC 364. Even as per decision relied by the petitioner previous statement of witness admissible if copies furnished in advance.

22. Even if it is assumed that Ex. M10 is not admissible due to non examination of the customer as such cannot be treated as substantial evidence as contended by the petitioner. Ex. M6 statement relied on by the petitioner said to have given by the same customer and Ex. M9 letter said to have been written by the manager are also not admissible for the same reason. If all the above documents are excluded we have on record the following undisputed facts that the petitioner received Rs. 7500/- from the customer Sri K. Hussain Saheb, that petitioner made credit entry of it in his pass book and ledger folio and absence of corresponding entry in the cashier/Manager scroll, sub day book and day book and pay in slip missing from the bundle. There is no evidence in support of the petitioner's version given in the claim statement and written arguments filed before the enquiry officer, that immediately after deposit the customer took away the amount but due to pressure of work he did not struck off entry in his pass book and ledger folio, while advising the attender to tear off pay slip. The said version remained as an averment only as the petitioner did not choose to step into the witness box to speak to the said fact. Further it is improbable to believe that he returned the amount without taking withdrawal form or cheque from the customer and without informing the manager and asked the attender to destroy the slip which is admittedly missing from bundle of deposit slips.

23. I have no doubt that petitioner came up with this version by way of an after thought after the mischief played by him was noticed at the time of tallying and accordingly obtained Ex. M8 letter from the customer. If there is any truth in his version he could have come up with the same at the earliest opportunity i.e. by way of explanation to the charge sheet. It is pertinent to note that he did not submit explanation to Ex. M1 charge sheet not filed list of witness. It is therefore quite probable that the petitioner obtained Ex. M8 : Letter dated 16-6-98 given by Hussain Saheb (Ex. M10 statement given by him later to the investigation officer. Simply because investigation officer went to the house of the customer during the course of investigation to enquire him about the incident and merely because Ex. M10 was not attested by any of the bank officials or independent witness it cannot be said that investigation officer obtained Ex. M10 from customer by extention, implicating the petitioner when no illwil or motive attributed to investigation officer in the cross examination. In addition to the above circumstance appearing in the case the enquiry officer relied on Ex. M10 as a piece of evidence.

24. I am of the view that even if the version of the petitioner is accepted it would go to show that he acted in a grossly negligent manner indischarging his duties and in a manner which is prejudicial to the interest of the bank which is trustee of the money of public.

25. I am therefore of the view that even in the absence of Ex. M10, there is sufficient material on record in support of the conclusion of the enquiry officer that the petitioner acted in a manner prejudicial to the interest of the management i.e. receipt of Rs. 7500/- for remittance from the account holder on 13-4-92, making credit entry in his SB Pass Book, ledger folio, absence of slip for depositing the amount absence of entry in the cashier/manager scroll, sub day and day book in which entries have to be made whenever cash is received, absence of withdrawal form, or cheque for payment of Rs. 7500/- to the customer on the same day failure on the part of the petitioner to speak on oath that he returned the amount to the customer but failed to score of entry in the pass book and ledger folio. As observed above even if the version of the petitioner is accepted it would go to show that he acted in a manner prejudicial to the interest of the bank. I am therefore unable to agree with the contention of the learned counsel for the petitioner that conclusion of the enquiry officer is not based on any acceptable evidence as such is perverse and the same has to be set aside by this Tribunal by way of judicial review. Hence I negative this ground of attack against the finding of the enquiry officer.

26. It is next urged by the learned counsel for the petitioner that the dismissal order passed by the disciplinary authority and appellate authority is grossly disproportionate to the charge proved against the petitioner as the petitioner has good record and as bank has not suffered any pecunary loss as the amount of Rs. 7500/- with interest was deposited in the bank. It is supported U/s. 11 A of I.D. Act the Tribunal has power to interfere with the punishment if it is harsh and excessive. It is submitted that hence lesser punishment may be imposed even if it is assumed that petitioner is negligent indischarging his duties. The learned counsel for the respondent however contended that punishment imposed is just and reasonable though no pecunary loss caused to the bank due to detection of the mischief done by the petitioner shortly thereafter at the time of tallying SB Account and the action of the petitioner amount to temporary misappropriation. He submitted that Banks are trustees for the public fund and that any employee acts to the prejudice of the bank, the public would loose confidence in the bank and when the bank authority lost confidence in its employees due to the grave misconduct proved against him, the punishment of dismissal cannot be said to be harsh. He submitted that disciplinary authority is the competent person to decide quantum of punishment and this tribunal cannot interfere with his power and that of appellate authority unless it is disproportionate to the charges proved. In support of this contention he placed reliance on the following decisions. (1) State of Orissa Vs. Bidyabushan 1963 SC 779, Railway Board New Delhi vs. Niranjan Singh AIR 1969 SC 966, State of Orissa Vs. Kskhetrabasi Mahanti and others (1997) II SCC 664, Disciplinary authority-cum-Regional Manager and other Vs. Nikunja Bihari Patnaik (1996) 9 SCC 69 and Punjab State Civil Supplies Corporation Vs. Narender Singh Nirodoshi (1997) 5 SCC 62.

27. On a careful consideration of the submission of the learned counsel and principle of law laid down in the above authority, order of the disciplinary authority and appellate authority I am of the view that order of dismissal passed in this case cannot be said to be disproportionate and harsh. The order of termination of service would show that disciplinary authority passed the above order as he lost confidence in the petitioner because of his conduct i.e., in misappropriating Rs. 7500/- of the customer I am of the view when the cashier of the bank having received substantial amount from the customer for remittence does not remit but makes credit entry in the pass book, ledger folio and fails to make entry in cashier/manager scroll, sub day and day book and removes the pay in slip from the bundle without knowledge of the manager, such an employee cannot be given lenient punishment. I am of the view that the major misconduct alleged against the petitioner amounts to acting prejudicial to the interest of the bank. Simply because the amount of Rs. 7500/- and interest was made good and thus there is no financial loss to the bank, it cannot be said that punishment imposed is harsh it has been held in the case of Sudhir Vishnu Panvalkas Vs. Bank of India 1997 (76) FLR P 322 that the termination of service of bank officer even without formal enquiry but on the ground of loss of confidence does not suffer from any vice. Hence I conclude that there is no merit in the contention of the petitioner that the punishment imposed is disproportionate to the charge proved.

28. In view of the above discussion, I am of the view that only point formulated for adjudication in this reference has to be answered against the petitioner as there are no grounds to hold that finding of the enquiry officer is perverse not being based on legal evidence and order of the disciplinary authority and appellate authority in dismissing the petitioner from service is unjustified. The point is answered accordingly.

29. In the result the reference is answered holding that the action of the management in dismissing the petitioner Workman from service is justified. Hence award is passed accordingly rejecting the reference.

Written and passed by me this 18th day of June, 1999

C. V. RAGHAVAIAH, Industrial Tribunal

Appendix of Evidanc

(On validity of Domestic Enquiry)

Witness Examined for the Petitioner :

NIL

Witness Examined for the Respondent :

MW1 S. Nagendranath.

Documents marked for the Respondent :

Ex. M1 Charge Sheet dt. 23-3-94 issuing to Sri K. Bhaskar Rao petitioner.

Ex. M2 Appointment dt. 30-7-94 of enquiry officer issued to the MW1.

Ex. M3 Date of intimation dt. 11-11-94 of the enquiry by the Enquiry Officer on 13-12-94.

Ex. M4 Enquiry Proceedings conducted by MW1 including the exhibits marked in the enquiry.

Ex. M5 Enquiry report submitted by MW1 on 21-2-95.

Ex. M6 Extract of Bipartite Settlement dt. 19-10-1966 as amended upto 28-2-94.

Ex. M7 Letter dt. 26-3-93 of the Manager, Syndicate Bank (MEX 12 in the enquiry) addressed to the divisional Manager (Part of Ex. M4).

Ex. M8 Letter dt. 10-3-98 given by Hussain Saheb (Ex. MEX 9 in the enquiry) to the branch manager (Part of Ex. M4).

Ex. M9 Letter dt. 19-3-93 written by the branch manager to the Divisional Manager (MEX 11 in the enquiry) part of Ex. M4).

Ex. M10 Letter dt. 18-11-93 obtained from Sri Peddi Hussain by CC Babu Vigilance Officer (MEX 14 in the enquiry New Part of Ex. M4.

Documents marked for the Petitioner :

NIL

Documents marked after the validity of Domestic Enquiry by either side

NIL

नई दिल्ली, 22 जुलाई, 1999

का. आ. 2327:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण श्रम-I, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-99 को प्राप्त हुआ था ।

[सं. एल.-12013/47/98-आई आर (बी-II)]

जी. रॉय, डैस्क अधिकारी

New Delhi, the 22nd July, 1999

S.O. 2327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-I, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 21-7-1999.

[No. L-12013/47/98-IR(B-II)]

G. ROY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HDERABAD

PRESENT :

Sri C. V. Raghavaiah, B.Sc., B.L., Industrial Tribunal-I.

Dated : 29th day of June, 1999

INDUSTRIAL DISPUTE NO. 30 OF 1999

BETWEEN

The President, Punjab National Bank Staff Union, C/o Punjab National Bank, LIC Building Branch, Bank Street, Hyderabad. .. Petitioner.

AND

Punjab National Bank rep. by the Regional Manager, PNB, Regional Office, A.P. Region, Saifabad, Opp. Secretariat, Hyderabad. .. Respondent.

APPEARANCES :

None for both the parties.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-12013/47/98-IR(B-II), dated 26/30-3-99 referred the following Industrial Dispute to this Tribunal for adjudication under Section 10(1)(d) and 2(A) of Industrial Disptues Act, 1947.

"Whether the action of the Punjab National Bank, A.P. Region, Hyderabad to order recovery of the Officiating allowance already paid to the members of the subordinate staff who are officiating in clerical cadre is in accordance with the terms of Clause 9.10(a) & (b) of the bipartite settlement ? If not, what relief the concerned workman entitled to?"

2. After receipt of the above reference this tribunal issued notice to both the parties. The representative of the Respondent appeared but the petitioner did not appear though notice served. The petitioner was given opportunity for filing claims statement on two occasions from 7-6-1999 to 29-6-99. But the petitioner union called absent on 29-6-1999 also. The union seems to be not interested in the reference. I therefore feel that no useful purpose will be served by keeping the I.D. on the file Hence the same is closed.

Given under my hand and the seal of this Tribunal, this the 29th day of June, 1999.

C. V. RAGHAVAIAH, Industrial Tribunal-I, Hyd.

नई दिल्ली, 22 जुलाई, 1999

का. आ. 2328:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-1, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-99 को प्राप्त हुआ था ।

[सं. एल.-12012/103/98-आई आर (बी-II)]

जी. रॉय, डैस्क अधिकारी

New Delhi, the 22nd July, 1999

S.O. 2328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-I, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 21-7-99.

[No. L-12012/103/98-IR(B-II)]

G. ROY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri C. V. Raghavaiah, B.Sc., B.L.,
Industrial Tribunal-I.

Dated : 30th day of June, 1999

INDUSTRIAL DISPUTE NO. 31 OF 1999

BETWEEN :

The General Secretary, Indian Bank Employees Union (AIBEA), Banjara Sadan, Narayanaguda, Hyderabad-500 029. .. Petitioner

AND

The Indian Bank rep. by the Regional Manager, IB, Labbipet, Opp : Kandhari Hotel, Bandar Road, Vijayawada. .. Respondent.

APPEARANCES :

None for both the parties

AWARD

The Government of India, Ministry of Labour by its Order No. L-12012/103/38/IR(B-II), dated 23-3-1999 referred the following Industrial Dispute under Section 10(1)(d) and Sub-section (2A) of Industrial Disputes Act, 1947 for adjudication :

"Whether the action of the management of Indian Bank in not absorbing the services of Shri T. Raja Sekhar, Senior most temporary sub-staff in permanent status is legal and justified? If not, to what relief the said workman is entitled?

2. After receipt of the said reference, this Tribunal issued notice to both the parties. Inspite of receiving the notice, both parties did not appear. However the matter was adjourned on two occasions for prosecuting the matter by the parties. On 30-6-1999, both parties called absent. Thus it would appear both sides are not interested in the proceedings. It is felt that no useful purpose will be served by keeping the proceeding pending. Hence the same is closed.

Given under my hand and the seal of this Tribunal this the 30th day of June, 1999.

C. V. RAGHAVAIAH, Industrial Tribunal.

नई दिल्ली, 26 जुलाई, 1999

का. आ. 2329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोलम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-99 प्राप्त हुआ था।

[सं. एल.-12012/76/97-आई. आर (बी-II)]

जी. रॉय, डैस्क अधिकारी

New Delhi, the 26th July, 1999

S.O. 2329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Kollam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 23-7-99.

[No. L-12012/76/97-IR(B-II)]

G. ROY, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, KOLLAM

(Dated, this the 12th day of July, 1999)

PRESENT :

Sri C. N. Sasidharan, Industrial Tribunal.

IN

Industrial Dispute No. 44/97

BETWEEN

The Chairman and Managing Director, Indian Bank Head Office Rajajisalai, Madras.

(By S/s. E. Subramani & Alias M. Cheriyan, Advocates Ernakulam)

AND

Sri M. Karthikeyan, Vattavilaputhen Veedu, Kanjirampara, Trivandrum.

(By Sri. R. Lekshmana Iyer, Advocate, Trivandrum)

AWARD

The issue referred for adjudication by the Government of India as per order No. L-12012/76/97/IR(B-II) dated 11-11-1997 is the following :—

"Whether the action of the Management of Indian Bank in dismissing Sh. M. Karthikeyan, Sub-staff from service without analysing the conditions and circumstances leading to the fraud due to the procedural lapses in the Pattom Branch is just and fair? If not to what relief the said workman is entitled?"

II. Sri. M. Karthikeyan was dismissed by the management accepting the finding of the enquiry officer who conducted a domestic enquiry into the charge raised against him. According to the management their action is just and proper but Sri. Karthikeyan is claiming reinstatement contending that there was no proper and valid domestic enquiry.

III. The question regarding the validity of the domestic enquiry was considered by this Tribunal as a preliminary issue. By order dated 6-7-1999 this Tribunal held that the enquiry was properly conducted and the findings are supported by legal evidence. The necessary facts involved in this case are stated in that order which I am extracting below in full :—

ORDER

This dispute relates to the dismissal of Sri. M. Karthikeyan workman in this case, by the management of Indian Bank.

2. The management before dismissing the workman initiated disciplinary proceedings against him by issuing charge memo alleging the following charge :

> "That during the period from 15-9-1990 onwards you have fraudulently encashed BP LIC cheques of various branches sent to our Pattom branch for collection and drawn on LIC staff Co-operative Bank Ltd. amounting to a total of Rs. 22,885 by unauthorisedly preparing the covering schedules and forging the officer's signature. You have also reportedly taken the cheques unauthorisedly from the inward mail before any entry was made in the branch and fraudulently encashed the same".

3. The workman submitted explanation to the charge memo which was found not satisfactory to the management. Accordingly the management ordered a domestic enquiry and the enquiry officer found the workman guilty of the charges. Accepting the findings of the enquiry officer the management imposed the punishment of dismissal. The management contends that the enquiry was proper and valid but according to the workman the enquiry is vitiated due to several reasons.

4. The workman has filed a detailed claim statement and the contentions are briefly as under : The workman was first appointed in the service of the Bank on 2-8-1979 as Peon and posted in the Pattom branch, Trivandrum. According to him he had no clerical duties or that of a cashier. While working so he was placed under suspension as per letter dated 14-12-1991 and called for his explanation on the charge stated above. He submitted explanation as detacted by the then branch manager Sri. S. V. Raghavan which was not a voluntary explanation. Further charge memo was also served by the management and the workman submitted explanation again. The management ordered a domestic enquiry and an officer of the Bank was appointed as an enquiry officer. After completion of the enquiry the management by notice dated 21-1-1994 informed him that the enquiry report had been accepted and directed the workman to show cause why the punishment of dismissal from service should not be awarded. He was served with copy of the enquiry report also. Subsequently he was dismissed from service as per letter dated 30-3-1994. The appeal filed by him was rejected by the Appellate Authority. The action of the management is illegal and unsustainable. The management has not furnished a copy of the enquiry report before accepting the findings recorded by the enquiry officer against the rules of natural justice and reasonable opportunity. The management has accepted the findings in the enquiry report and even decided the punishment provisionally before issuing the copy to the workman. This caused serious prejudice to the workman The dismissal is rendered invalid, illegal and unsustainable of this ground. List of management witnesses was not served in advance which is violation of the rules of natural justice causing serious prejudice to the workman. The enquiry officer has not properly assessed evidence before him before arriving at his conclusions. His adverse findings are perverse, arbitrary and unfair. The enquiry officer and Disciplinary Authority failed to note that there were several procedural lapses in the Pattom branch of the management and this workman had not committed any fraud, dishonesty or unauthorised act. The allegation of forging the signature of the officer was not proved against the workman on the basis of admissible evidence. The documents were not properly proved in the enquiry. Further the punishment imposed is disproportionate to the nature of the charges. The past unblemished service of the workman was not taken in this account by the management. After dismissal from service he remains unemployed. The prayer is for setting aside the order of the dismissal from service and directing reinstatement in service with all consequential benefits.

5. The management has filed a detailed reply statement and the contentions are briefly as under : The branch manager Pattom branch of the Bank on 28-10-1991 reported to the Regional Manager regarding encashment and misappropriation of three cheques of the Life Insurance Staff Co-operative Bank Ltd. by the workman. The workman immediately repaid the amount on that day itself. The workman in the letter dated 9-11-1991 addressed to the branch manager admitted forging of the signature of officer in the three cheques and utilised the proceedings of the three cheques for his personal needs. An investigation was ordered and the details of instruments forged and encashed by the workman were revealed. The management accordingly placed him under suspension by proceedings dated 14-12-1991. The nature of the forging and the unauthorised action of the workman were intimated by the same proceedings. He was given a show cause notice which is replied by him by letter dated 21-1-1992 admitting the allegations of encashment of the cheques and misappropriating the total amount of Rs. 23,885. The workman was therefore charge-sheeted by the proceedings dated 25-11-1992 and he was required to submit his explanation. In the reply dated 30-12-1992 the workman accepted the charges levelled against him. By proceedings dated

30-1-1993 the Disciplinary Authority appointed Sri. Meerasa, the then Asst. Chief Officer, Regional Office, Trivandrum as the enquiry officer. The enquiry officer conducted the enquiry in which the workman was represent ed the president of the association of the workman. Witness were examined on both sides. Witnesses examined on the side of the management were cross examined by Sri. Ramesh Babu, the defence assistant of the workman. Documents were marked in the presence of the defence assistant without any protest. There was also no objection in examining four witnesses on behalf of the management. The management's representative and the defence assistant argued the matter. The enquiry officer submitted the report on 1-11-1993. Copy of the enquiry report was given to the workman along with the show cause notice as to why the punishment of dismissal without notice should not be imposed. The personal hearing was also granted to him. However, the workman did not submit any written explanation but he was personally heard by the Disciplinary Authority. Then also he did not deny his guilt. The Disciplinary Authority after considering all the aspects imposed the punishment of dismissal. The workman filed Appeal before the Appellate Authority. He admitted his guilt in the said Appeal stating the reason for the fraud as financial difficulties. The Appellate Authority by order dated 16-5-1994 confirmed the dismissal. The dismissal was due to misconduct of very serious nature that his service cannot be allowed in the Bank which deals with public money. There was no allegation of any procedural lapses in the management Bank. There is only a faint and vague allegation in the claim statement. There is no statement of specific details regarding procedural lapse in the Pattom branch.

6. Further case of management is that duties of Peon includes collection of thapals from Post Office and also collection of proceedings of instrument tendered by the branch at other branches|Banks. The workman was given copy of the enquiry report along with show cause notice against the proposed punishment. He was also given opportunity of being heard. No serious prejudice is caused to the workman as contended by him. The punishment of dismissal is not vitiated for any of the reasons stated by him. He has not submitted any explanation to the show cause notice given to him along with the enquiry report. In the personal hearing also he had not denied the guilt. The present contention is only vague. The nature of prejudice caused to him because of the alleged illegality is also not been detailed by him in the claim statement. There was no complaint from the workman or his defence assistant that no list of witnesses were served in advance. There is no violation of the rules of natural justice causing any serious prejudice also. Without demur the workman participated in the enquiry proceedings and cross examined all the witnesses. The presenting Officer informed the enquiry officer by letter dated 20-5-1993 that copy of the documents have been sent directly to the defence assistant and also informed the witness listed. The enquiry officer come to his conclusion based on the consistency as well as co-operation of the evidence of the witnesses and also based on the documentary evidence. The findings of the enquiry officer are not preverse, arbitrary and unfair as alleged. The allegations levelled against the workman have been well established in the enquiry proceedings on the basis of reliable evidence. Forgery of the signature of the officer has been proved satisfactorily in the enquiry. Further the workman has admitted and did not dispute the forgery by him of the signature. The documents were admitted in evidence in the presence of defence assistant and there was no objection in admitting the documents. According to the management the workman has committed serious misconducts which was clearly established in a properly conducted domestic enquiry on the basis of concrete evidence. Further the punishment imposed is only commensurate with the gravity of misconduct and the workman is not entitled to any relief.

7. In view of the rival contentions regarding the validity of the enquiry that point was considered as a preliminary issue. The enquiry proceedings, enquiry report and connected documents have been marked as Ext. M1 series without examining the enquiry officer as consented by the learned counsel for the workman. Both sides were heard elaborately.

8. The first point of attack against the enquiry is that the management has not given the copy of the enquiry report to the workman before accepting the findings of the enquiry officer and before deciding the punishment to be imposed. This according to the learned counsel for the workman is gross violation of the rules of natural justice causing serious prejudice to the workman and on this reason the order of dismissal is rendered invalid and illegal. In support of this argument reliance was also placed on a decision of the Supreme Court in Managing Director, ECIL Hyderabad V. V. Karunakar (1994 I LLJ 162). It is not disputed that the management issued show cause notice by proceedings dt. 21-1-1994 requesting the workman to show cause against the proposed punishment of dismissal. Along with that copy of the enquiry report was also admittedly given to the workman. The workman has not submitted any written explanation to this notice. However, he took the advantage of the personal hearing afforded to him in the very same proceedings and in the personal hearing he had not denied the guilt. In the proceedings dated 21-1-1994 the management has proposed to impose the punishment of dismissal. The workman failed to deny the findings of the enquiry officer and he has not complained about the non supply of the copy of the enquiry report before the Disciplinary Authority proceeded to accept the findings of guilt. Having thus, failed to raise invalidity illegality and unsustainability of the proceedings dt. 21-1-1994, it is now upon to him to contend that there is gross violation of natural justice causing serious prejudice to him. Further the nature of prejudice caused to him is also not been detailed in the claim statement. In these circumstances the present contention can only be considered as an after thought and is only to be rejected.

9. In the decisions cited by the learned counsel the delinquent was never given copy of the enquire report and he was not given reasonable opportunity to deny the charges. Hence, the apex court held that the action of the management in that case is breach of principles of natural justice. In the instant case as

stated above the workman was already given opportunity to show cause and given copy of the enquiry report and afforded opportunity for personal hearing He has not submitted any written reply questioning the findings of the enquiry and the proposed punishment. In this state of affairs this decision, according to me has no bearing to the facts and circumstances of the present case.

10. The second point of attack is that the witness schedule and document had not been furnished to the workman earlier before starting enquiry and this caused much prejudice to him. The contention is that this is violation of the rules of natural justice, as he could not identify the witness and prepare for the cross examination. The workman was represented by a defence assistant who is an officials of the union of the workman. During the enquiry the workman and the defence assistant never raised any complaint that no list of witness was served in advance so as to enable them to identify the witnesses and prepare for their cross examination. Without raising any objection all the management's witnesses were cross-examined in detail by the defence assistant. Further, the nature of prejudice caused to the workman on this ground is also not detailed in the claim statement. Throughout the enquiry there was active participation by the workman through his defence assistant and there was no whisper of any complaint against the management regarding the alleged non-supply of list witnesses and documents. Moreover the workman has also examined & one clerk from the Pattom branch as his witness. In part 34 of the written statement the management has stated that the presenting officer of management submitted list of witnesses and documents relied upon by the management to the enquiry officer under cover of his letter dated 20-5-1993 and the presenting officer has also endorsed in the said letter that copy of the documents have been sent directly to the defence assistant and also informing the witnesses listed. This statement of management remains unchallenged or uncontroverted. In this state of affairs it cannot be held that any prejudice has been caused to the workman as alleged. Hence, the punishment of dismissal without notice is not vitiated for the alleged reasons.

11. Now, with regard to the non supply of the list of documents, it is evident from the enquiry proceedings that all the documents produced by the management had been admitted in evidence in the presence of defence assistant and he has not raised any objection regarding the admissibility of those documents. There was no objection by the defence assistant in the documents being admitted in evidence not lack of proof of the documents in the enquiry It is therefore not open to the workman now to turn round and contend that the documents have not been properly proved in the enquiry. The contention is therefore only to be rejected

12. The third point of attack is that the allegation of forging the signature of the officer in the cheques was not proved against the workman on the basis of relevant and admissible evidence It may be noticed that the encashment and misappropriation by the workman of three cheques was reported on 28-10-1991 and he on that day itself repaid the amount covered by that three cheques. Moreover, in the letter dated 9-11-1991 addressed to the manager, Pattom branch the workman accepted and admitted that he had forged signature of the officer and thereby encasherd the three cheques and utilised the proceeds for his personal needs. No doubt the workman has a contention that he has submitted letter to the management admitting the guilt not voluntarily but as dictated by the branch manager But such a contention has not been established Moreover, the workman has submitted two more letters dated 21-1-1992 and 30-12-1992 admitting the misconduct. Therefore, the present contention can only be considered as an after thought to escape from the punishment. Further, investigation conducted by two Inspectors of the Bank revealed details of instrument fradulently encashed by the workman resulting his suspension. In view of the admission and the remittance of the amount by the workman it was not necessary to prove the forged signature in the cheque. Further the workman or his representative never raised such a contention during the course of the enquiry. On these grounds this contention of the learned counsel for the workman is only to be rejected.

13. The fourth point of attack in that there were several procedural lapses in the Pattom branch of the management Bank which led to the loss of amount resulting chargesheeting of the workman for which he is not at all responsible. It is specific to note that in the enquiry proceedings there was not even a faint suggestion of any procedural lapses which allegedly led to any fraud as pleaded by the workman. Even in the claim statement there is only a vague allegation of several procedural lapses. The workman has not specified the details regarding procedural lapses. In the absence of such specific allegation and establishment of alleged procedural lapses, this allegation can only be considered as unsustainable.

14. As stated above the workman was given chargesheet specifically explaining the misconduct that he was given opportunity to give explanation that a domestic enquiry was ordered with notice to him that he was permitted to be represented by defence assistant that he and his defence assistant participated in the enquiry throughout that all the witnesses on the side of the management were cross examined by the defence representative that the workman adduced evidence on his side that all the documents were marked in his presence and that the workman and his representative were given sufficient opportunity to submit argument note. As a matter of fact there was no necessity of holding an enquiry because the workman has admitted the misconduct by submitting three letters to the management and remited the amount misappropriated by him. On going through the findings of the enquiry officer it is abundantly clear that the enquiry officer has assessed the evidence adduced by both sides in an objective manner and came to his conclusion. There are no grounds to hold that the enquiry has been conducted in violation of the principles of natural justice. There is also nothing to show that the findings of the enquiry officer are perverse.

15. In view of what is stated above, I hold that the enquiry has been conducted fully in compliance with principles of natural justice and the findings are proper, valid and supported by legal evidence.

IV. The only point remaining for consideration is regarding the propriety of punishment. According to the workman as stated in his claim statement the punishment of dismissal is disproportionate to the nature of the charges. Further his unblemished past service was not taken into account by the management before deciding the quantum of punishment. It is also submitted that the workman's only source of livelihood had been taken away by the illegal dismissal from service. This contention is opposed by the management contending that considering gravity of the misconduct and the fact that the management is a banking institution the present punishment is only commensurate.

V. As held by me above the workman was found guilty of the charge levelled against him in a properly conducted domestic enquiry. It is also specific to note that the workman repeatedly accepted and admitted that he had forged the signature of officer and thereby encashed three cheques and utilised the proceeds for his personal needs. As per letters dated 9-11-1991, 21-1-92 and 30-12-92 addressed to the officers of the management the workman has specifically admitted his guilt. Further he had deposited the amount immediately after revealing the forgery. Moreover in the appeal filed by the workman before the appellate authority against the punishment of dismissal the workman has again admitted his guilt. It is noticeable that the management being a bank deals with public money and if person like the workman is allowed to continue there that will definitely affect the image of the bank among the public which will adversely affect the business of the bank. Therefore it is not at all advisable to continue the service of the workman in the bank. On a consideration of the totality of circumstances particularly the gravity of the misconduct admitted and proved against the workman, I am of the opinion that the punishment of dismissal imposed on the workman is only commensurate with the gravity of the misconduct committed by him. The argument that the management has not considered the unblemished past service of the workman while imposing the punishment is without force considering the above circumstances. There are no exenuating circumstances also warranting interference from the Tribunal.

VI. In view of what is stated above, an award is passed holding that the action of the management of Indian Bank in dismissing Sri M. Karthikeyan from service is just and fair and hence he is not entitled to any relief.

C. N. SASIDHARAN, Industrial Tribunal

APPENDIX

Witness examined on the side of the Management Ext. M1-Series. Enquiry proceedings, enquiry report and connected documents.

नई दिल्ली, 26 जुलाई, 1999

का. आ. 2330.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ मैसूर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-07-1999 को प्राप्त हुआ था।

[सं. एल-12012/102/92-आई आर (बी-I)]
जी. रॉय, डैस्क अधिकारी

New Delhi, the 26th July, 1999

S.O. 2330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Mysore and their workman which was received by the Central Government on 2-7-1999.

[No. L-12012/102/92-IR(B-I)]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BANGALORE

Dated : 7-7-1999

PRESENT:

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 81/92

I PARTY	II PARTY
Shri M. N. Kurwatti, Zonal Secretary State Bank of Mysore Employees Union, HUBLI-580 020	The Regional Manager, State Bank of Mysore Zonal Office Region III, HUBLI-580 020

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/102/92-IR, B. III dated 26-10-1992 on the following schedule:

SCHEDULE

"Whether the dismissal of Shri B. L. Joshi from service w.e.f. 28-3-89 by the management of State bank of Mysore is justified? If not, to what relief(s) the workman is entitled to ?"

2. This tribunal has received this reference on 30-10-92. Immediately it was registered and notices were sent. The first party, inspite of service of notice

by ordinary post issued on 30-10-1992 and the notices issued under RPAD on 29-1-1993 has not made any efforts to appear and file his claim statement. Later he has made a pretence of appearing who has not filed his claim statement at all. The case called again on 7-7-1999, again the first party remained absent.

3. The conduct of the first party shows that he is not interested to participate in this dispute for making proper adjudicaion. Though legally bound to file his claim statement 15 days after receipt of the reference or after receipt of the notices by this tribunals he has not done so. Unless he files his claim statement there would not be any scope to take counter statement of the second party to decide the dispute as the burden is placed on the second party.

4. The first party has deliberately flouted the mandatory directions contained in Rule 10.B.

In view of these circumstances the following order is made :

ORDER

The reference is rejected.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 7-7-1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 26 जुलाई, 1999

का. आ. 2331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-99 प्राप्त हुआ था।

[सं. एल.-12012/283/90-आई आर (बी-II)]
जी रॉय, डैस्क अधिकारी

New Delhi, the 26th July, 1999

S.O. 2331.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 23-7-99.

[No. L-12012/283/90-IR(B-II)]
G. ROY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 15th July, 1999

PRESENT :

Justice R. Ramakrishna,
Presiding Officer.

C. R. No. 12/91

I PARTY :

Sri Ramesh S. Agasimani,
C/o General Secretary,
Dharwad Dist. Bank
Employees Assn.,
No. 9, Corporation Building,
Broadway, Hubli-580020.

II PARTY :

The Regional Manager,
Bank of Maharashtra,
Regional Office,
Basavanagudi,
Bangalore-560004.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Orders No. L-12012|283|90 IR. B(II) dated 6-3-1991 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of Bank of Maharashtra in dismissing Sh. Ramesh S. Agasimani from the services of the Bank is justified ? If not to what relief the workman is entitled ?"

2. The I Party joined as a sub staff w.e.f. 21-10-1974. During 1988 the II Party have received a complaint from one of their customer M. P. Bijapur, SB account holder No. 2507, that a sum of Rs. 4,500/- was falsely withdrawn from his account unauthorisedly which requires an investigation. The bank conducted a preliminary investigation and there it was found that this workman embezzled the amounts shown in the complaint. Therefore the management issued an Article of charge giving in detail misconduct committed by this workman giving full particulars of the methods adopted by him in this criminal misadventure. Ex.. M-2 is the charge sheet dated 18-10-1988.

3. The charges in brief is as follows :

1. Since you were having access to the Bank's records, you have taken undue advantage of your position as a Bank

employee and on 19-1-1988, you had written a withdrawal slip for Rs. 1,000.00 (Rupees One Thousand only) on the S. B. Account No. 2507 of Shri M. P. Bijapur, forged his signature on the face and back of the said withdrawal slip. Further with an intention to misguide the Bank's Officials and the account holder, you have signed in the name of Shri Abdul Zasi, as receiver of the above payment, withdrew Rs. 1,000.00 from S.B. Account No. 2507 and misappropriated Bank's funds.

2. On 4-3-1988, you have once again written a withdrawal slip for Rs.1,000.00 (Rupees One Thousand only) on the same account forged the signature of Shri M. P. Bijapur, Account holder on the face and back of it, then signed in the name of Shri Abdul Zasi as receiver of the payment withdrew Rs. 1,000.00 from S. B. Account No. 2507 and misappropriated Bank's fund. Thus you have taken undue advantage of your having access to Bank's records, by virtue of your employment in the Bank.

3. Again on 11-3-1988, you had written a withdrawal slip for Rs. 2,500.00 (Ruppees Two Thousand Five Hundred only) in the S. B. Account of Shri M. P. Bijapur, forged his signature on the face and back of the withdrawal slip. Then to misguide the Bank's Officials and the account holder, you have signed in the name of Shri Abdul Zasi as receiver of the above payment, withdrew Rs. 2,500.00 from S.B. Account No. 2507 and misappropriated Bank's funds. Thus you have failed to protect the interests of the Bank and discharge your duties with utmost integrity and honesty. This is very much unbecoming of a Bank Employee.

It is evident that with an intention to dupe and defraud the Bank, you have committed the aforesaid acts of misconduct in a pre-planned manner. Within the meaning and expression of clause 19.2 of Bi-partite settlement, 1966 and modified till date, your above misconducts involving acts of fraudulent activity, amounts to offence involving moral turpitude. As such, in terms of clause 19.3(a) of B. P. Settlement 1966, Bank can take steps to get you prosecuted under provisions of law.

4. In short the I Party was charged for the offence of cheating, forgery and misappropriation coming under clause 19.2, 19.5(j) of the bipartite settlement.

5. An Enquiry Officer was appointed to conduct the Domestic Enquiry against the misconduct. Enquiry Officer has commenced on 17-12-88. On that day the II Party represented by their Presenting Officer P.H.V. Acharya. This workman was present along with his Dr. V. V. Dharwadkar. At the initial stage, as disclosed in the enquiry report, and the proceedings of that day the Dr. has initially made some requests to study the papers and also requested for Kannada version of the charge sheet, Copy of the complaint of Bijapur, Copy of preliminary enquiry report and copies of confession letters dated 24-3-88 and 26-3-88 made by the workman. The said request was rejected in part and adjourned the enquiry to be held on 7-1-89.

6. The proceedings of 7-1-89 discloses that of Enquiry Officer read the contents of charge to the workman and after came to know that he understood the contents of the charge he has been asked to have his say with regard to charges. The I Party admitted the charges. After confirming that his admission is unconditional and voluntary the said plea was taken into consideration and proceeded further.

7. Immediately thereafter the enquiry was concluded after marking all the documents produced by the II Party. The workman was given one more opportunity to submit any statement in his defence. The statement given by him was recorded and marked as Ex. D1. In view of the voluntary admission the Presenting Officer has not examined the witnesses and the enquiry was concluded and adjourned to given a finding. Thereafter the Enquiry Officer gave enquiry findings dated 13-1-89, as per Ex. M-16, holding that the charges are proved against the workman. He has also enclosed Ex. D1 where this workman requested to consider his case sympathetically looking into his past service and family background.

8. The Disciplinary Authority accepted this findings and passed an order of dismissal.

9. The I Party, when the reference is made to this court for adjudication of the dispute he has filed his claim statement. Initially he has questioned the delay in issuing charge sheet as he was suspended from service on 3-4-88 and the charge sheet was issued on 18-10-88. His next contention is that without giving Kannada version of the charge sheet the Enquiry Officer has conducted and concluded the proceedings with a demolishing tactics and gave a finding without examining any witness. He has also questioned the findings of the Enquiry Officer as biased and partison. He has repeated the above averments throughout his statement in a different manner. As it regards to the punishment his contention is that the proposed punishment of dismissal was heavy and both Disciplinary Authority and the appellate authority have gave a go by to their discretionary powers and therefore he is entitled for

reinstatement, back wages, cost and other reliefs. He has also prayed that the Order of dismissal is an excessive punishment.

10. The II Party in their counter statement have rejected the various contentions taken by the I Party in his claim statement. They have specifically contended that the misconduct committed by the I Party was grave. Since he has pleaded guilty which was unconditional and voluntary, the source is sufficient to come to a conclusion that the I Party has committed the offence. They have further contended that he has also admitted the charges before commencement of the enquiry which shall be taken as corroborative, piece of evidence. Therefore no interference to the order of dismissal is warranted.

11. Initially this tribunal has framed a preliminary issue to give a findings on the validity of Domestic Enquiry. My predecessor has recorded the evidence on this issue by both parties. The evidence of Enquiry Officer was recorded on 18-5-92. The evidence of the I party was recorded on 18-12-92. As we found that no order has been passed on this preliminary issue. This aspect of the matter was noticed later. After hearing the learned Representative and the Advocate we have passed an Order on 6-7-99 holding that the Domestic Enquiry was quite fair and proper. The said order discloses several aspects which is the cause for such delay in giving a finding on this issue.

12. Time and again this tribunal pointed out how the representative to the parties and the Advocates are responsible for such a sorry state of affairs. Therefore the parties have directed to address their arguments on 8-7-99. The arguments heard.

13. Shri M. Rama Rao the General Secretary of Employees Association has contended that the findings of the Enquiry Officer does not deserve for consideration as the same is made without examining the witness which is absolutely necessary to prove the charge. Against this submission Sri N. Mahalingam, the authorised representative of the II party has contended that since the I party pleaded guilty before the Enquiry Officer which is preceeded by his earlier two letters there is no legal impedements for the Enquiry Officer to give a finding on the unconditional plea of guilt, taking assistance from the other documents which are part of this enquiry.

14. There is considerable force in the submission of the representative for II party. The law envisages that in the Domestic Enquiry if the delinquent pleads guilty, it is the prerogative of the Presenting Officer to examine his witnesses or not. It is also opened for the DR if he is able to establish any materials beneficial to the defence in cross-examining the witness inspite of plea of guilty. No such pleas have been made by the DR, therefore it is the prerogative of the Enquiry Officer which gave power to pass orders when he has not concerned with such situation. When a voluntary plea is made it is sufficient to hold that the charges are proved, till the contrary is established.

15. Sh. MRR nextly submitted that on the face of plea of guilt the management could have been taken a sympathetic approach on the question of awarding punishment. Against this submission Sh. Mahalingam contended that this workman as a substaff has committed a misconduct which jeoparadised the running of the bank and the bank also suffered disrupt by its customers. Since the offence is proved, and this being an offence of moral terpitude and due its gravity a lesser punishment than the order of dismissal is not warranted.

16. Admittedly this workman has pleaded guilty earlier to this enquiry he has also accepted the misconduct through his letters dated 24-3-88 and 26-3-88.

17. I have carefully gone through the confession letters dated 24-3-88 and 26-3-88 he has stated that there was an outstanding loan of Rs. 31,000 which was obtained for construction of a House and he has also borrowed some money from outside and there was demand to return the money and he was not able to pay to the outstanding debt as the take home salary was not sufficient to maintain his big family which consisted of Mother, Wife and 4 children.

18. The above facts discloses that initially the I party has not supressed the fact of his misconduct. But later may be due to ill advice he has taken different contentions before this tribunal. When a person pleads guilty and expressed that such an offence was committed not nor to violate any law but due to unavoidable circumstances there was no impediment for the management to consider this aspect of the matter, especially by taking into consideration is unblamished past services. Therefore it is a fit case where the benevolant provisions contained in Section 11A can be applied.

19. It may be wondered how in a case of this nature the benefit of section 11A may be extended ? The answer is very simple.

20. The conduct of the workman by his letters mentioned above and his conduct before Enquiry Officer requires minute examination. Though he had engaged DR he has not taken the advantage of resiling from the admission of his mistake through the letters cited above. This is precisely the disciplinary authority or the appellate authority would have considered before an order of dismissal was made. After all considering of these aspects is not strange to the law. Therefore the legislatures in their wisdom after considering a well reasoned judgement rendered by Mr. Justice Thakkar, the then Chief Justice of Gujarat High Court, in R. M.

Parmar v|s Gujarath Electricity Board have introduced section 11A through an amendment Act 45|79 w.e.f. 15-12-71. Infact the criminal law also recognised extending Reformative theories when a situation of this nature occurs. Therefore the accused used to be released by due admonition and sometimes on probation, when this is the governing principles law on the question of punishment, the bank cannot deviate from their outlook only on the plea that a particular offence is grave in nature. The circumstances leading to the committing of an offence should also be taken into consideration.

21. Section 11A gives discretion to the adjudication authority to satisfy itself that the order of discharge or dismissal, if not justified, the power to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions as it thinks fit, or give such relief to workman including the award of lesser punishment in lieu of discharge or dismissal as the circumstances of the case warrants. The provision of this section indicates the adjudication authorities shall rely only the materials on record and shall not take any fresh evidence in relation to this matter for the application of this section. Therefore no judgement rendered prior to the introduction of this section, throw any light on the discretionary powers of the adjudication authorities.

22. By appreciating the limitation stated above this tribunal is not reapprising the evidence, as it generally understood. It is only an attempt to extend the benevolant provision under which the descretion is vested to the tribunals and we are extending that descretion taking into consideration the facts and circumstances of each case.

23. In view of the discussion made above I make the following order.

ORDER

24. The order of dismissal made by the II party on the proved misconduct is hereby set aside. By this order this tribunal is not prepared to put the bank to financial burden. It is directed that this workman shall be reinstated to the position he was held at the time of dismissal. He is not entitled for any monitory benefit such as Backwages. There shall be continuance of service which will benefit him at the time of his retirement. The reference is answered accordingly.

(Dictated to the Stenographer, transcribed by him corrected and signed by me on 19th July, 1999).

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जुलाई, 1999

का.आ. 2332.—केन्द्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (क) उपखण्ड (6) के उपबन्धों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 775 दिनांक 18 फरवरी, 1999 द्वारा नाभकीय ईंधन और संघटक, भारी पानी और संबद्ध रसायन तथा आणविक ऊर्जा को उक्त अधिनियम के प्रयोजनों के लिए 26 फरवरी, 1999 से छ: मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है।

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (न) के उप-खण्ड (vi) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 26 अगस्त, 1999 से छः मास की और कालावधि के लिए उपयोगी सेवा घोषित करती है।

[सं एस-11017/3/97 आई आर. (पी.एल.)]

एच सी. गुप्ता, अवर सचिव

New Delhi, the 28th July, 1999

S.O. 2332.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 775 dated the 18th February, 1999 Industrial establishments manufacturing or producing Nuclear Fuel and Components, Heavy Water and Allied Chemicals and Atomic Energy to be a public utility service for the purpose of the said Act, for a period of six months from the 26th February, 1999;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 26th August, 1999.

[No. S-11017|3|97-IR(PL)]

H. C. GUPTA, Under Secy.

नई दिल्ली, 5 अगस्त, 1999

का.आ. 2333.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 सितम्बर, 1999 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है)। और अध्याय-5 और 6 [धारा—76 की उपधारा (1) और धारा—77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

मार्तण्डम क्षेत्र के राजस्व ग्राम के रूप में शामिल क्षेत्र, पोनमाने, आत्तूर, वियनूर, अरुविक्करै, तिरुवत्तार, तिरुपरप्पू, तुम्बकोड, कालकुलम तालुक के। अरुदेसम पकोड, नलूर मैतूकुमाल, कोलनकोड, पल्लूगल, कलीयल, वीलावाकोड, इडैकोड, आरुमानै, इडुदेसम, कुमूतूर, नट्टालम, मैनकोड, वैलमकोड, कुल्लुपुरम, अन्डुकोड, वीलावन्कोड तालुक जिला कन्याकुमारी।

[सं० एम-38013/13/99-एस.एस. 1]

जे.पी. शुक्ला, अवर सचिव

New Delhi, the 5th August, 1999

S.O. 2333.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st September, 1999 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapters V and VI (except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Tamil Nadu, namely :—

"Marthandam centre, Areas comprising the Revenue villages of Ponmanai, Atoor, Veeyanoor, Aruvikkarai, Tiruvattar, Thiruparuppu, Thumbacode of Kalkulam Taluk, Arudesam, Pacode, Nalloor, Methukumal, Kollancode, Palugal, Kaliel, Vilavancode, Edaicode, Arumanai, Ezhudesam, Kunnathoor, Nattalam, Moncode, Vellamcode, Kulappuram, Anducode of Vilavancode Taluk in Kanyakumari District."

[No. S-38013/13/99-SS.II]

J. P. SHUKLA, Under Secy.

Printed by the Manager, Govt. of India Press, Ring Road, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054. 1999